



Transcript of the Testimony of
Michael L. Connell

Taken On: November 3, 2008

Case Number: 2:06 CV 745

Case: King Lincoln Bronzeville Neighborhood Assn., et al., vs.
Ohio Secretary of State Jennifer Brunner, et al.,

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
SOUTHERN DIVISION

- - -

KING LINCOLN BRONZEVILLE)

NEIGHBORHOOD ASSN., et al.,)

Plaintiffs,)

vs.) CASE NO.

OHIO SECRETARY OF STATE) 2:06 CV 745

JENNIFER BRUNNER, et al.,)

Defendants.)

- - -

Deposition of MICHAEL L. CONNELL, a witness herein, called by the Plaintiffs for Examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Binnie Purser Martino, a Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, pursuant to Notice and agreement of counsel at the law offices of Benesch, Friedlander, Coplan & Aronoff, LLP, 200 Public Square, Suite 2300, Cleveland, Ohio, on Monday, the 3rd day of November, 2008, commencing at 12:03 o'clock p.m.

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I N D E X

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1 MICHAEL L. CONNELL

2 of lawful age, a witness herein, having been
3 first duly sworn, as hereinafter certified,
4 deposed and said as follows:

5 EXAMINATION

6 **BY MR. ARNEBECK:**

7 **Q.** Good morning, Mr. Connell.

8 **A.** I do. I guess, yes.

9 **Q.** Good afternoon, rather. Thank you for
10 being here today. Would you please state your
11 full name for the record?

12 **A.** Michael L. Connell.

13 **Q.** Would you give us your address?

14 **A.** 3046 Brecksville Road, Richfield, Ohio,
15 44286.

16 **Q.** And just for the routine, would you
17 describe your education subsequent to high
18 school.

19 **A.** I attended the University of Iowa,
20 graduated '86, no postgraduate work.

21 **Q.** And subsequent to your graduation from
22 college, would you briefly just summarize your
23 work experience?

24 **A.** 1986, worked for Congressman Jim Leach in
25 Iowa. 1987, I went to work for the Bush for

1 President campaign in Iowa, then was transferred
2 to the Washington office, worked for the
3 inaugural in '88. Is this the level of detail
4 you are looking for?

5 Q. Yeah.

6 A. Okay. Worked for the inaugural in 1988,
7 1989, worked a year in the Department of Energy,
8 then went to work for Dan Coats for Indiana.

9 Then in 1991, I returned to Iowa and worked
10 for a group called Iowans against
11 Gerrymandering, for redistricting, then went to
12 New Hampshire, worked for the Bill Hatch
13 campaign. Then after -- let's see, that would
14 have been the '92 cycle.

15 After the '92 election cycle, went to
16 Capitol Hill, worked for Congressman Martin
17 Hoke, and after that election cycle, I started
18 New Media Communications.

19 Q. And where do other entities in which you
20 are a key player fit into the history of
21 GovTech, for example?

22 MR. ERVIN: Are you asking just
23 about GovTech?

24 BY MR. ARNEBECK:

25 Q. Were you going to continue? I just

1 wanted --

2 **A.** No, I mean -- I worked for New Media ever
3 since starting it.

4 **Q.** Is GovTech a sister company, or what is the
5 relationship between New Media and GovTech?

6 **MR. ERVIN:** And we are -- just
7 off the record real quick?

8 **MR. ARNEBECK:** Sure.

9 (Thereupon, a discussion was held off
10 the record.)

11 **BY MR. ARNEBECK:**

12 **Q.** If you don't mind, would you explain where
13 GovTech fits into the picture?

14 **A.** There were governmental opportunities, and
15 we felt it made more sense to do that in a
16 separate company, as opposed to under the same
17 company as New Media Communications.

18 So really, a spin-off is a legal term, but
19 really a separate entity emerged and that was
20 GovTech.

21 **Q.** Okay. And when did that emerge?

22 **A.** I believe we started doing GovTech --
23 government work in maybe -- I think it was '99,
24 I think is when we started; and I think it was
25 around 2000 that we decided to form GovTech and

1 get it formally incorporated, or formally -- it
2 is an LLC. So I guess it would still be
3 incorporated. So 2000, 2001.

4 **Q.** And then you were involved in similar kinds
5 of activities politically in one forum, New
6 Media, and working for different governmental
7 entities under the GovTech umbrella?

8 **MR. EPSTEIN:** Object to the form
9 of the question. You can go ahead and answer.
10 I just have to say that for the record.

11 **MR. ERVIN:** He can object to a
12 question and I can object to a question.

13 **THE WITNESS:** Oh. Then what
14 happens?

15 **BY MR. ARNEBECK:**

16 **Q.** You can go ahead and answer.

17 **MR. ERVIN:** You can go ahead
18 and answer, unless I tell you otherwise.

19 **THE WITNESS:** Okay.

20 **MR. ERVIN:** If you understand
21 the question.

22 **THE WITNESS:** Yes, I just can't
23 remember what it was.

24 Similar, but different. The GovTech,
25 for instance, you know, pursued and obtained a

1 GSA, a schedule, which is a fairly in-depth
2 process where they kind of check you out, make
3 sure that you have got competitive rates, the
4 whole nine yards.

5 It is really to keep Federal
6 Government contracting, you know, aboveboard and
7 prevent cronyism, quite frankly.

8 So similar activities, but different,
9 I guess. Am I -- I mean, government, the
10 purpose of government is very different than the
11 purpose of a national organization or a campaign
12 or a different entity.

13 So, you know, but the programming
14 skill sets that were used at both were similar.

15 **BY MR. ARNEBECK:**

16 **Q.** Do you want to just briefly capsulize, as
17 you were doing up to 2000, follow that same
18 pattern of the basic kind of work that you are
19 doing, starting in 2000, where you are
20 functioning both in a New Media -- under a New
21 Media umbrella and GovTech's umbrella?

22 **MR. ERVIN:** Can you be more
23 specific when you say what type of functioning?

24 **BY MR. ARNEBECK:**

25 **Q.** For example, you are working on which

1 political campaigns and which governmental
2 entities from 2000 to present?

3 **A.** GovTech was not involved in any campaigns.
4 GovTech, again, is governmental. I can't --
5 quite frankly, I don't get passionate about
6 governmental work usually the way I do about
7 more of the types of work, the political work,
8 the national organization work that is done by
9 New Media.

10 So I would be more hands off in terms of my
11 day-to-day involvement, if that is what you are
12 drilling on, my day-to-day involvement.

13 **Q.** Sure. I mean, just a sense for your
14 background.

15 **MR. ERVIN:** Can you be more
16 specific? I don't understand the question that
17 you are asking.

18 **MR. ARNEBECK:** Well, I thought he
19 was doing a good job explaining his professional
20 activity over the course of time since college.
21 We got to 2000, we get the creation of GovTech,
22 and I was hopeful he could briefly capsulize the
23 same as he did before, from graduation to 2000,
24 just carry the timeline forward.

25 **MR. ERVIN:** You want him to

1 talk about every person he has worked for since
2 2000?

3 **MR. ARNEBECK:** No. Let me just
4 ask specifically.

5 **THE WITNESS:** Okay.

6 **BY MR. ARNEBECK:**

7 **Q.** Are we correct in understanding that you
8 did do work both in the Jeb Bush campaign for
9 governor of Florida and then subsequently, as
10 GovTech, do work for the State of Florida?

11 **MR. ERVIN:** Objection. We are
12 here about the Ohio 2004 and 2006 election. The
13 judge was --

14 **MR. ARNEBECK:** Jim, we have all
15 this stuff, so we don't have to do this. But in
16 terms of just a normal introduction, and if you
17 have an objection, we will go on.

18 **MR. ERVIN:** Please.

19 **BY MR. ARNEBECK:**

20 **Q.** Okay. Well, as you know, Mr. Connell, we
21 have some questions that we would like your help
22 in addressing.

23 The threshold question that we have is,
24 have you been threatened in regard to giving
25 truthful testimony about the election of 2004 in

1 Ohio?

2 **MR. ERVIN:** Before he answers,
3 this portion and that question must be sealed.

4 **MR. ARNEBECK:** And that is agreed.
5 We are sealed from this point forward.

6 **THE WITNESS:** No.

7 **BY MR. ARNEBECK:**

8 **Q.** And when I say "threatened," this is any
9 form of expression, even if it is, you know, in
10 hypothetical terms or subtle terms, anything to
11 cause you to believe that Mr. Rove, through
12 communicating through someone else, is telling
13 you that if you were to expose certain aspects
14 of the 2004 election that might implicate him or
15 others in improper activity, criminal activity,
16 nothing of that sort has been communicated to
17 you?

18 **A.** That's correct.

19 **Q.** And specifically, Mr. Jeff Averbeck has not
20 had any communications with you in regard to
21 testimony which you might give concerning the
22 2004 election in Ohio?

23 **MR. ERVIN:** Don't answer that.
24 Who is Jeff Averbeck?

25 **MR. ARNEBECK:** Jeff Averbeck is

1 President of SmarTech.

2 **MR. ERVIN:** You can answer the
3 question, if you know.

4 **THE WITNESS:** To the best of my
5 recollection, Jeff and I have not discussed
6 this.

7 **BY MR. ARNEBECK:**

8 **Q.** Okay. So were you aware that we -- you
9 have read the materials that we had received a
10 tip from someone purporting to be within the
11 McCain campaign, indicating that such a threat
12 had been communicated to you?

13 **MR. EPSTEIN:** Objection.

14 **MR. ERVIN:** Objection. What
15 materials are you -- objection to form. What
16 materials are you referencing?

17 **MR. ARNEBECK:** When we filed in
18 opposition to your motion to compel, and our
19 request for the immediate hearing, we attached
20 the declaration of Brett Kimberlin, part of
21 which he recited the series of tips that had
22 come into him, anonymous tips that had come into
23 him.

24 **BY MR. ARNEBECK:**

25 **Q.** I am just asking if you read that or are

1 familiar with that?

2 **MR. ERVIN:** Don't answer that
3 question. The judge said this is not about the
4 2008 election. This is about 2004 and 2006.
5 The judge indicated you had some leeway as it
6 pertained to Mr. Rove, but asking about the
7 McCain campaign involves the 2008 election.
8 That is outside the scope of the judge's order.

9 **MR. ARNEBECK:** My specific
10 question was in regard to testimony concerning
11 the improper activity in the 2004 Ohio election
12 that would implicate Mr. Rove or others in
13 improper activity.

14 **MR. ERVIN:** And Mr. Connell
15 answered no. Your follow-up question was
16 whether he had knowledge about a tip regarding
17 the McCain -- from the McCain campaign. That
18 deals with the 2008 election.

19 **MR. ARNEBECK:** No, the tip, I am
20 asking if he is familiar with the tip, the fact
21 that we received a tip, and that the tip was in
22 reference to Mr. Rove attempting to intimidate
23 Mr. Connell in regard to testifying about the
24 2004 Ohio campaign.

25 **MR. ERVIN:** So you are asking

1 if he read the information contained on the
2 memorandum in opposition?

3 **MR. ARNEBECK:** Yes.

4 **MR. ERVIN:** Did you read the
5 memorandum in opposition?

6 **THE WITNESS:** I read what you
7 provided to me. But there was nothing in there
8 about this.

9 **BY MR. ARNEBECK:**

10 **Q.** So you are not familiar --

11 **A.** No.

12 **Q.** -- by that means or any other means --

13 **MR. ERVIN:** Let him ask the
14 question.

15 **THE WITNESS:** Okay.

16 **BY MR. ARNEBECK:**

17 **Q.** -- that we were -- people working with us
18 received a tip indicating that you were being
19 threatened?

20 **MR. ERVIN:** Objection. Don't
21 answer that. Asked and answered. You are
22 asking -- you asked him if he was threatened.
23 He said "no." Now you are asking him if he
24 knows whether you got a tip. He indicated he
25 didn't read -- he doesn't know about that, and

1 he only read what I provided him.

2 **MR. ARNEBECK:** Okay. Are you
3 instructing him not to answer?

4 **MR. ERVIN:** I am instructing
5 him not to answer.

6 **BY MR. ARNEBECK:**

7 **Q.** All right. Would you describe how you were
8 involved in the 2004 Ohio Presidential election?

9 **A.** You are asking my personal involvement?

10 **Q.** Yeah.

11 **A.** Through New Media Communications, we were
12 the Web site developer to the Bush campaign, as
13 well as a vendor to the Republican National
14 Committee.

15 **Q.** And how else?

16 **A.** I am sorry, you asked --

17 **Q.** Any further involvement?

18 **A.** You mean -- I am sorry, ask the question
19 again.

20 **Q.** How were you involved in the 2004 Ohio
21 Presidential election?

22 **MR. ERVIN:** Personally or
23 professionally?

24 **MR. ARNEBECK:** Both.

25 **MR. ERVIN:** How were you

1 personally involved?

2 **THE WITNESS:** I am just trying to
3 think of how else. I mean, you know, I mean,
4 you know -- GovTech had --

5 **MR. ERVIN:** You can answer that
6 question.

7 **THE WITNESS:** Okay. As I think
8 you know, the election night reporting system
9 was -- GovTech was involved in the election
10 night reporting.

11 **BY MR. ARNEBECK:**

12 **Q.** And how were they involved?

13 **A.** Basically, the Secretary of State needed
14 help in a system that, one, would stay up on
15 election night. There had been problems
16 previously with the system being able to perform
17 under high traffic, and they also wanted
18 something that was attractive, that represented
19 the office well.

20 So it was a public -- I want to be clear on
21 this, it was a public reporting system, public
22 data.

23 **Q.** And in designing or helping, providing the
24 help that the Secretary of State wanted, would
25 you elaborate on what the sequencing of that was

1 and how you were involved personally and
2 professionally in that work.

3 **MR. ERVIN:** His answer must be
4 sealed from here on out.

5 **MR. EPSTEIN:** I am going to
6 object to the form of the question.

7 **THE WITNESS:** A number of pieces
8 were in place from previous elections.
9 Previously, it had been done internally by the
10 Ohio Secretary of State IT staff. And if memory
11 serves, the problem was, everything was in
12 Oracle and they were trying to allow Oracle
13 queries to be done in real-time, and it was
14 something, quite frankly, that it wasn't
15 designed to do. It wasn't -- it was a
16 resource -- quite frankly, it was a resource
17 hog.

18 **BY MR. ARNEBECK:**

19 **Q.** Resource hog?

20 **A.** Resource, resource hog. It was designed
21 for, you know, one person to go in and do
22 queries, so it uses up a lot of computer
23 resources.

24 So they wanted something, you know --

25 **Q.** I am sorry, was it resource hog, h-o-g?

1 **A.** Hog, yeah.

2 **Q.** Okay. Thank you.

3 **A.** So they wanted something so that the
4 public, the general public, the media, whoever
5 else, could come and, in real-time, get sort of
6 a snapshot or close to real-time, get a snapshot
7 of kind of the aggregate numbers that were
8 occurring in Ohio.

9 As I believe you know, many, if not all, of
10 the individual boards of elections can and will
11 publish their own results. And this was really
12 an aggregation of that data.

13 **Q.** In the work in that regard, were you
14 interacting with other contractors at the
15 Secretary of State's office?

16 **A.** Yes.

17 **Q.** And who were those contractors you were
18 interacting with?

19 **A.** I am trying to remember, because we did
20 this over a couple of different -- there were a
21 couple of different elections we did this. I am
22 trying to remember. I think GCR was there
23 starting in 2004. As I said, the Ohio Secretary
24 of State IT staff, SmarTech had been contracted
25 for the failover mirroring.

1 Q. I am sorry?

2 **A.** The failover, because there had been a
3 problem in the past, when they reached the point
4 prior to our involvement in previous elections
5 where they had crushing traffic, the system
6 failed, which means that Web pages were not
7 available.

8 So members of the public, members of the
9 media, other interested parties, when they tried
10 to get the results, it came up with the site was
11 down, which is embarrassing for any public
12 official, or anybody for that matter.

13 A lot of people, the one night they really
14 need you to be there is on election night. So
15 they needed to have a failover facility. And
16 that was as if the primary system failed, there
17 was a secondary location where the results would
18 be mirrored.

19 Q. And what was the evolution of the
20 involvement of that second location? As I
21 understand it, it is SmarTech as the backup
22 location?

23 **MR. ERVIN:** Objection; form.

24 You may answer, if you know.

25 THE WITNESS: Hmm?

1 **MR. ERVIN:** You may answer the
2 question.

3 **THE WITNESS:** He's just going to
4 ask it differently. Let's go back a bit. We
5 are in a post 9/11 environment, so a lot of
6 governmental agencies started to look at their
7 disaster planning a lot more carefully. And so
8 usually, it is pretty common in a disaster plan,
9 is if you have got basically a smoldering coal,
10 your primary facility is, what is your backup.

11 So normally, you identify something
12 that is removed from the primary servers that
13 are hosting a Web site, or whatever, whatever it
14 is you are hosting, where the data can be
15 mirrored. So it is like a real live backup.

16 And so my recollection is, like a lot
17 of different other government agencies,
18 Secretary of State's office looked to find a
19 facility that could mirror the data, discovered
20 it was very expensive. They did, to their
21 credit, look to Ohio firms first.

22 My understanding, although I was not
23 directly involved, is that they were cost
24 prohibitive, and they took a look at additional
25 firms outside the State of Ohio, and I believe

1 that is where they first came into interaction
2 with SmarTech.

3 But that never, apparently for
4 budgetary reasons, there was never a decision
5 made to do a broad based mirroring or failover.
6 Does that make sense?

7 BY MR. ARNEBECK:

8 Q. I didn't quite understand the broad based.

9 **A.** Like everything. If you took everything
10 that the entire agency, you know, everything
11 that is on the plain servers, and --

12 Q. In other words, a complete duplication of
13 the office IT versus this election function?

14 **A.** Yes.

15 **Q.** As a specific backup?

16 **A.** Yeah. No, previously there had been --
17 they were looking for a complete solution. And
18 that is how they kind of started down that road.

19 Q. And are you involved in the management,
20 ownership, control of SmarTech?

21 **A.** I am not.

22 **MR. EPSTEIN:** Object to the form.

23 MR. ERVIN: You may answer.

24 **THE WITNESS:** I am not.

25

1 **BY MR. ARNEBECK:**

2 **Q.** And were you involved in any fashion in
3 steering the business to SmarTech or
4 recommending it -- recommending that SmarTech
5 get the business?

6 **MR. ERVIN:** Objection as to
7 form. When you say "steering the business," can
8 you be --

9 **BY MR. ARNEBECK:**

10 **Q.** To the extent you are in a professional
11 relationship as GovTech with the Secretary of
12 State, did you personally or professionally have
13 any role in recommending or speaking well of, or
14 helping SmarTech get this business?

15 **A.** I mean, they got the business on their own
16 merit. I want to be very clear on that.

17 I also want to be clear, I mean, SmarTech
18 is a vendor. They provide a computer service,
19 just like Verizon, you know, provides cell
20 service and a lot of different people use
21 Verizon. SmarTech is a professional services
22 firm.

23 I mean, I was not involved in the
24 selection; I can't recall how they entered into
25 the picture. But an independent decision was

1 made to go with SmarTech.

2 **Q.** Do you have any sense for whether that
3 decision would have been made at the political
4 level or at -- the professional contractors that
5 were already involved, like yourself, were they
6 making that decision?

7 **MR. ERVIN:** Objection as to
8 form.

9 **MR. EPSTEIN:** Objection; form and
10 foundation.

11 **MR. ERVIN:** You can answer, if
12 you know.

13 **MR. ARNEBECK:** Off the record a
14 minute here.

15 (Thereupon, a discussion was held off
16 the record.)

17 **MR. ARNEBECK:** Mr. Ervin is
18 asserting that this discussion is under seal,
19 and we will reserve taking that up with the
20 judge whether that fits within trade secrets.

21 **BY MR. ARNEBECK:**

22 **Q.** Okay. If you recall the last question, go
23 ahead. Otherwise, I will restate it.

24 **A.** Just restate it, if you don't mind.

25 **Q.** Yeah. At the point -- you were already

1 working with the Secretary of State at the point
2 SmarTech comes into the picture?

3 **A.** That is correct.

4 **Q.** In your capacity of your business
5 relationship with the Secretary of State's
6 office, do you have a sense for whether the
7 selection of SmarTech to provide this backup
8 function originated with the internal Civil
9 Service folks at the Secretary of State's
10 office, or originated with the consulting
11 groups, including GovTech?

12 **MR. EPSTEIN:** Objection; form and
13 foundation.

14 **THE WITNESS:** My understanding --
15 and again, this is not firsthand -- is it was
16 based on professional capacity and cost and that
17 it was a nonpolitical decision.

18 **BY MR. ARNEBECK:**

19 **Q.** A decision by whom?

20 **A.** I believe it was the IT staff, Secretary of
21 State.

22 **Q.** And who was that at the time?

23 **A.** Joe Leonti was running it, Bob Mangan was
24 involved, Cliff -- I can't remember Cliff's last
25 name. Wow.

1 **Q.** Were the contractors, if they were not
2 primarily involved, were they consulted in that
3 decision?

4 **MR. ERVIN:** Objection; form and
5 foundation.

6 **MR. EPSTEIN:** Join in the
7 objection.

8 **BY MR. ARNEBECK:**

9 **Q.** You can answer.

10 **MR. ERVIN:** Yes, you can
11 answer.

12 **THE WITNESS:** Does that mean -- I
13 am still confused. If you guys both object, do
14 I have the right --

15 **MR. ERVIN:** If we make an
16 objection, unless we tell you not to answer, you
17 may answer his question to the best of your
18 ability.

19 **THE WITNESS:** Okay. What was the
20 question again?

21 **BY MR. ARNEBECK:**

22 **Q.** You have indicated in your previous answer
23 that you thought that the Secretary of State's
24 staff were the folks that made this decision.

25 My question was, were, to your knowledge,

1 were the -- was GovTech or other outside
2 contractors involved at all with the decision,
3 in terms of --

4 **MR. EPSTEIN:** Objection.

5 **THE WITNESS:** Not that I recall,
6 no.

7 **BY MR. ARNEBECK:**

8 **Q.** To what extent did you focus on any
9 questions of security of the system for counting
10 the votes, tabulating the votes, reporting the
11 votes in the 2004 election?

12 **A.** No, this was not a vote counting system.
13 It was just simply a reporting system. Do you
14 understand the distinction I am making?

15 **Q.** Yes. You are indicating your role in what
16 we are talking about is strictly GovTech?

17 **A.** Yes.

18 **Q.** And GovTech is strictly focused upon a Web
19 display of results that are being generated out
20 of the system, which you are saying you are not
21 involved otherwise?

22 **A.** Right, no.

23 **Q.** All you are doing is Web posting.

24 **A.** Right.

25 **Q.** But Web posting is Web posting?

1 **A.** Right.

2 **Q.** Now, if there was a discussion at the
3 Secretary of State's office the week preceding
4 the election about the scheduling of personnel
5 that would be on site on election night -- well,
6 let me put it this way: Were you at the
7 Secretary of State's office the week preceding
8 the election, at a meeting of both staff and
9 contractors in which there was a discussion
10 about who would be on site on election night?

11 **A.** No, I have no recollection. Quite frankly,
12 I don't think that would be the case.

13 **Q.** Okay. So to the best of your recollection,
14 you were not at a meeting where Bob Mangan was
15 informed that he would not be expected to be on
16 site on election night after 9:00?

17 **A.** After 9:00?

18 **Q.** Bob Mangan.

19 **A.** A.m. or p.m.?

20 **Q.** 9:00 p.m.

21 **A.** This is the first I have ever heard that.

22 **MR. ERVIN:** Is that a "no"?

23 **THE WITNESS:** That would be a
24 "no."

25

1 **BY MR. ARNEBECK:**

2 **Q.** What is the extent of your knowledge of the
3 protocol with the hierarchy of control and
4 management at the Secretary of State's office on
5 election night?

6 **MR. EPSTEIN:** Object to the form.

7 **BY MR. ARNEBECK:**

8 **Q.** As I understand it from the exhibit, the
9 exhibit called the architecture map, there is a
10 little place where GovTech, in the box for
11 GovTech, there are some names of individuals and
12 names of other entities.

13 To what extent are you familiar with the
14 reporting relationships, who is giving direction
15 and exercising management control at the
16 Secretary of State's office on election night?

17 **MR. ERVIN:** Objection as to
18 form. Do you have that document?

19 **MR. ARNEBECK:** Yes, yes. I would
20 like to make copies of this and mark it to this
21 deposition as Exhibit A.

22 **MR. ERVIN:** Do you want me to
23 make copies? Off the record, please.

24 (Thereupon, a discussion was held off
25 the record.)

1 (Thereupon, Plaintiff's Exhibit 1 of
2 the M.L. Connell deposition was
3 marked for purposes of
4 identification.)

5 **BY MR. ARNEBECK:**

6 **Q.** I have handed the witness what has been
7 marked for identification as Deposition Exhibit
8 1, and it is titled "SOS Election Production
9 System Configuration for Web Results Entry, EN
10 Staff Results Entry and Web Queries, 11/2/04."

11 Have you seen this exhibit, Mr. Connell?

12 **A.** That is Exhibit I.

13 **Q.** Right.

14 **A.** And you guys had it on Friday.

15 **Q.** Right. And had you previously been
16 familiar with this document?

17 **MR. ERVIN:** Before when?

18 **MR. ARNEBECK:** Before last Friday.

19 **THE WITNESS:** I think the staff
20 internally, I think it was produced by Ohio
21 Secretary of State IT staff, yeah. Prepared by
22 Bob Mangan. I am not sure that I have.

23 **BY MR. ARNEBECK:**

24 **Q.** Okay. While we are doing this, why don't
25 we mark the second exhibit as Exhibit 2 for the

1 election night -- or rather, as of 10/23/06 for
2 the 2006 election.

3 (Thereupon, Plaintiff's Exhibit 2 of
4 the M.L. Connell deposition was
5 marked for purposes of
6 identification.)

7 **BY MR. ARNEBECK:**

8 **Q.** I would like to ask the witness if he is
9 familiar with Exhibit 2?

10 **MR. ERVIN:** Again, is that
11 before last Friday?

12 **MR. ARNEBECK:** Yes.

13 **THE WITNESS:** I am not sure.

14 **MR. ERVIN:** Just tell him that.

15 **THE WITNESS:** All right. I am
16 not sure that I have seen it in this form. I
17 don't think I have seen this -- I don't know if
18 I have seen this.

19 **BY MR. ARNEBECK:**

20 **Q.** Were there -- to your knowledge, were there
21 multiple iterations of these exhibits? That is,
22 if they were being generated by the Secretary of
23 State's staff, were there a series of such
24 documents reflecting the development of the
25 plans for managing the system prior to these two

1 elections?

2 MR. ERVIN: Objection.

3 MR. EPSTEIN: Objection.

4 MR. ERVIN: Form and lack of
5 foundation.

6 MR. EPSTEIN: Same objections.

7 MR. ERVIN: You can answer the
8 question.

9 THE WITNESS: Again, I don't
10 know. I suspect as much. It is a common
11 practice.

12 MR. ERVIN: Don't speculate.
13 If you know it, you know it.

14 THE WITNESS: Okay.

15 BY MR. ARNEBECK:

16 Q. Again, of your personal knowledge, if you
17 maybe don't recall these specific documents, do
18 you recall other architecture maps for elections
19 of this nature?

20 MR. ERVIN: Objection as to
21 form and lack of foundation. You may answer, if
22 you know.

23 THE WITNESS: No.

24 BY MR. ARNEBECK:

25 Q. You mentioned -- in the lead-up to your

1 engagement or to the SmarTech engagement, you
2 mentioned a failure problem in a prior election.
3 What was that?

4 **A.** Essentially the system, the Web pages --
5 and this would have been prior to our
6 involvement, the internal staff was responsible
7 for the election night presenting the aggregates
8 to the public, and if memory serves, they were
9 doing a -- they were allowing the public to do
10 queries that were very resource intensive.

11 So if a lot of people came to the site all
12 at once and tried to take a look at a variety of
13 different counties, even though it was fairly
14 simple data, it overwhelmed the system, and the
15 Web site pages were not available.

16 So, again, you know, I want to be clear.
17 The primary objective here was to be up, to be
18 available to the public to see very simple
19 results, an aggregate of the counties.

20 **Q.** And when did this prior failure occur, was
21 that the 2002 election?

22 **A.** I believe it was -- I do not know for sure,
23 I think it was 2002.

24 **Q.** And was there any failure of the primary
25 system in 2004?

1 **MR. ERVIN:** When you say
2 "primary system," are we still talking about the
3 system that the public can view the results?

4 **MR. FITRAKIS:** The Secretary of
5 State site which would cause you to go to the
6 mirror-over site in Chattanooga.

7 **THE WITNESS:** None that I am
8 aware of.

9 **BY MR. ARNEBECK:**

10 **Q.** So to the best of your knowledge, your
11 system, your Web face, or Web design and Web
12 display functioned without problems the election
13 night 2004 and the primary, Secretary of State's
14 primary tabulation computers in their office
15 functioned without failure or problems also?

16 **MR. ERVIN:** Objection to form.
17 You have asked kind of two questions. One was
18 about whether, what he did in terms of
19 addressing the public system, if that worked,
20 and then you asked the second question about
21 whether or not the Secretary of State's voting
22 tabulating system, and I would say as to the
23 first question, he can answer. As to the second
24 question, I would object as to form and to lack
25 of foundation.

1 **MR. ARNEBECK:** Okay. Let's
2 rephrase.

3 **BY MR. ARNEBECK:**

4 **Q.** Everything worked fine in your system, your
5 Web design and display for the 2004 election; is
6 that correct?

7 **A.** Yes.

8 **Q.** And to your personal knowledge, in your
9 professional role in managing, being part of a
10 team that is managing the data system of the
11 Secretary of State on election night, are you
12 aware of any overload problem or failure problem
13 in the primary computers at the Secretary of
14 State's office that would have triggered the
15 backup capability that you described that
16 SmarTech was providing?

17 **MR. ERVIN:** Objection as to
18 form and foundation. You may answer.

19 **MR. EPSTEIN:** Join in the
20 objections.

21 **THE WITNESS:** Again, so you
22 understand, it is important that you understand,
23 it is election night on a Presidential election.
24 Okay. It is a simple reporting system.

25 **MR. ERVIN:** If you could just

1 answer his question.

2 **MR. FITRAKIS:** It is just the
3 real-time number system, I mean, reporting to --

4 **THE WITNESS:** Just aggregating
5 county data, that is all it was doing,
6 aggregating county data, so the people could go,
7 media could go to one spot and see what the
8 totals were, you know, the most recent numbers
9 were for Ohio.

10 So, you know, it is not really where
11 my focus was that night. You know, I think the
12 system performed fine. It took a lot of
13 traffic, given the interest in the State of Ohio
14 on that particular evening. But that is about
15 all I know.

16 To the best of my knowledge, there
17 was not a failover case scenario -- or it was
18 not a failover situation.

19 **BY MR. ARNEBECK:**

20 **Q.** That you had previously described that
21 prompted bringing in a backup, SmarTech?

22 **MR. ERVIN:** Objection.

23 **MR. EPSTEIN:** Objection.

24 **MR. ARNEBECK:** Maybe I could
25 rephrase.

1 **MR. ERVIN:** I think you have
2 two different things. There is the public
3 system that crashed, and that deals with just
4 reporting the aggregate numbers that come in
5 from the Board of Elections.

6 Then you asked a question about the
7 SmarTech system, and you asked that in reference
8 to tabulating the votes. So I think that you
9 are talking -- I think you are asking two --

10 **MR. FITRAKIS:** No, that is the
11 failover mirror, correct? You said that the
12 SmarTech system was the failover mirror, right?
13 So it is not the tabulators, it is the
14 real-time.

15 **THE WITNESS:** Well, don't use
16 "real-time," because we could spend the next
17 four weeks arguing about what real-time is.

18 **MR. FITRAKIS:** Okay.

19 **MR. ERVIN:** Stop. Can we go
20 off the record for a minute, please?

21 **MR. ARNEBECK:** Sure.

22 (Thereupon, a discussion was held off
23 the record.)

24 **BY MR. ARNEBECK:**

25 **Q.** On the record, you had previously

1 described --

2 **A.** Um-hum.

3 **Q.** -- a failover, I think was the term you
4 used, that had resulted in bringing SmarTech
5 into the picture; and I guess my question was,
6 on election night 2004, was there a problem that
7 was solved by having the SmarTech rollover or
8 backup, whatever, mirror, come into play, so in
9 the larger sense, there was not a problem,
10 because it was covered by SmarTech? Do you have
11 knowledge of whether that happened?

12 **MR. ERVIN:** Objection as to
13 form and lack of foundation. You may answer, if
14 you know.

15 **THE WITNESS:** I don't know.

16 **BY MR. ARNEBECK:**

17 **Q.** Okay. Going back to the question of the
18 selection of SmarTech, do you have personal
19 knowledge as to the other work that SmarTech
20 does in terms of Web hosting, or the server
21 function for what is its client base, are you
22 familiar with that?

23 **A.** They do hosting for us. I mean --

24 **MR. FITRAKIS:** Us being --

25 **THE WITNESS:** -- New Media. I

1 mean, I don't know really what you are asking.
2 I mean, again, it is like saying, "Do you know
3 who uses Verizon?"

4 **BY MR. ARNEBECK:**

5 **Q.** Well, you are a smart man, sir, and I mean,
6 you are aware that SmarTech, when you say "is
7 hosting for us as New Media," New Media is
8 serving Republican organizations, and that if we
9 looked at the list of entities that are being
10 served by SmarTech, they are the bluebloods of
11 Republican politics, you will not find any
12 Democratic -- partisan Democratic organizations
13 on their list, are you aware of that?

14 **MR. ERVIN:** Objection, move to
15 strike. Do not answer that question. This gets
16 outside the scope of what the judge set forth in
17 his order. And he alluded to this type of
18 issue.

19 **MR. ARNEBECK:** Well, what we are
20 talking about is --

21 **MR. FITRAKIS:** Can we go off the
22 record?

23 **MR. ARNEBECK:** -- is man in the
24 middle, which I was instructed to inquire
25 extensively about. We are talking about the

1 presence in a system of someone with an
2 interest, a partisan interest and a possible
3 position to manipulate a process to the
4 advantage of that partisan interest.

5 And I don't think the record, you
6 would suggest that the record should exclude the
7 fact that Mr. Connell, in his position as CEO of
8 New Media Communications, is not aware that he
9 is only, in that capacity, only serving
10 Republican clients and also not aware that
11 SmarTech, which is providing this backup
12 function, is in a similar position to be a
13 company that only serves partisan Republican
14 clients.

15 **MR. ERVIN:** I have no problem
16 with questions being asked about the man in the
17 middle concept, I will call it.

18 And clearly, the judge said that
19 could be asked. The question you posed was more
20 of a statement than a question, one.

21 Two, you haven't asked a question
22 about the man in the middle, and you haven't
23 laid a proper foundation by which my client can
24 respond to that issue.

25 And three, the judge clearly said the

1 fact of whether or not they are Republicans or
2 Democrats is not pertinent to the scope of the
3 questions that you have.

4 So if you want to address my client's
5 political affiliation, religious affiliation,
6 whether or not he is a member of a political
7 party has nothing to do with the limited scope
8 of what you may inquire about of him. And I
9 will instruct him not to answer questions that
10 begin or are framed in such a way.

11 If you want to ask about the man in
12 the middle, you are right, you have every right
13 to ask about that and explore that.

14 But when you lead off and attack my
15 client for being a Republican, that is outside
16 the scope of why we are here.

17 **MR. ARNEBECK:** Jim, far be it from
18 me to attack your client for being a Republican.
19 It is a very fine party with great traditions.

20 The only point is, he was describing
21 SmarTech as like Verizon. Verizon serves all
22 the political parties, it has no partisan focus
23 and if someone were to say that Verizon in the
24 way it is providing telephone services is
25 somehow slanting something in one partisan

1 direction or the other, in terms of its
2 affiliations or the client base it is serving,
3 there would be no basis.

4 He made the statement. This is
5 cross-examination, and I am free to inquire,
6 because it begins to get into the question of
7 man in the middle.

8 MR. ERVIN: I think he made the
9 statement as an analogy as to the best of his
10 knowledge what SmarTech does in serving a wide
11 variety of people. But you have asked no
12 question to start this -- do you want to take a
13 break and speak to him?

14 MR. FITRAKIS: Yes.

15 MR. ERVIN: Let's go off the
16 record. There is a conference room on the other
17 side, if you want to use that.

18 (Thereupon, a discussion was held off
19 the record.)

20 BY MR. ARNEBECK:

21 Q. Mr. Connell, are you aware or not aware
22 that the Web site for the George W. Bush
23 campaign 2004 was being hosted on the SmarTech
24 servers in Chattanooga, Tennessee?

25 A. Yes.

1 **Q.** And were you aware or unaware that the
2 servers for the Republican National Committee
3 were being hosted -- in the 2004 election were
4 being hosted on the SmarTech servers in
5 Chattanooga, Tennessee?

6 **MR. ERVIN:** One sec.

7 **THE WITNESS:** I don't know.

8 **MR. ERVIN:** Go ahead, answer
9 the question. That is all right. Go ahead and
10 answer.

11 **THE WITNESS:** Do you want it
12 sealed, just because it is client?

13 **MR. ERVIN:** No, answer the
14 question.

15 **THE WITNESS:** Yes.

16 **MR. ERVIN:** We are going to
17 seal the last two questions and those answers,
18 please.

19 **MR. ARNEBECK:** And we are
20 reserving our disagreement with Mr. Ervin on
21 this being subject to seal.

22 **BY MR. ARNEBECK:**

23 **Q.** Are you aware or unaware that e-mails from
24 Mr. Rove are being processed on the server of
25 SmarTech in Chattanooga, Tennessee?

1 **MR. ERVIN:** Objection; lack of
2 foundation. You may answer.

3 **MR. EPSTEIN:** Join that
4 objection.

5 **MR. ERVIN:** You can answer his
6 question. This is under seal.

7 THE WITNESS: No.

8 BY MR. ARNEBECK:

9 Q. All right. To be more specific, are you
10 aware or unaware that the GWBush43.com Web site
11 was being hosted on the SmarTech servers in
12 2004, Chattanooga, Tennessee?

13 **MR. FITRAKIS:** GWB?

14 **MR. EPSTEIN:** Objection.

15 **MR. ERVIN:** Just answer his
16 question. Just answer his question.

17 **THE WITNESS:** I have heard
18 rumors, but I don't --

19 **MR. ERVIN:** If you know.

20 **THE WITNESS:** I have no direct
21 knowledge.

22 BY MR. ARNEBECK:

23 Q. Does New Media have any involvement in this
24 Web site, GWB43.com?

25 **A.** No, they do not.

1 **Q.** Did New Media or GovTech or you, in any
2 other professional capacity, have any
3 involvement in -- a Web site in which -- and a
4 service in which Mr. Rove's e-mails were being
5 processed?

6 **MR. EPSTEIN:** Object to the form.

7 **THE WITNESS:** No.

8 **MR. ERVIN:** Do you need to talk
9 to me?

10 **THE WITNESS:** Yeah.

11 **MR. ERVIN:** Can we go off the
12 record for a minute?

13 **MR. ARNEBECK:** Yes.

14 (Thereupon, a recess was taken.)

15 **MR. ERVIN:** Thank you.

16 **MR. ARNEBECK:** Did we have a
17 question outstanding?

18 **MR. ERVIN:** I don't believe so.

19 **THE WITNESS:** I answered it.

20 **BY MR. ARNEBECK:**

21 **Q.** Mr. Connell, was SmarTech at any time a
22 subcontractor or service provider to any of your
23 companies?

24 **A.** Yes.

25 **Q.** And what were they?

1 **A.** SmarTech performs the vast majority of our
2 hosting, so all of our hosting services that we
3 provide would be via SmarTech, or the vast
4 majority for New Media, for New Media
5 Communications.

6 **Q.** And with respect to GovTech, just some, not
7 all?

8 **A.** Most governmental entities host their own
9 stuff.

10 **Q.** So as to the GovTech relationship with
11 SmarTech in the Secretary of State's office,
12 that was their relationship, not your
13 subcontract, right?

14 **A.** I just have to think. I am not -- I am
15 looking -- I am not looking at you, I am looking
16 your direction. I mean, they may have been a
17 subcontractor. I would have to -- I don't know.
18 I would have to go back and look at the
19 contract. Sometimes for contracting purposes,
20 they are structured that way.

21 **Q.** Okay. But this seems a little odd in
22 relation to our earlier discussion about your
23 role or GovTech's role in bringing SmarTech into
24 the picture. Wouldn't you know if, in fact, at
25 the end of the day, regardless of how it

1 happened, they either were or were not a
2 subcontractor of your company?

3 **MR. ERVIN:** Objection; form.
4 You may answer.

5 **THE WITNESS:** No, I previously
6 said it is pretty common for us to use SmarTech
7 for hosting and that it is pretty common for us
8 to bundle that into a contract.

9 I mean, you are a vendor -- you want
10 a Web site, you come to us, you want a Web site
11 built, you want it hosted, you want to pay one
12 bill every month or whatever it is.

13 So I am not understanding why -- I am
14 not understanding your disconnect.

15 **BY MR. ARNEBECK:**

16 **Q.** Well, I just thought we had an earlier
17 discussion about how SmarTech came into the
18 picture, and you had indicated that it came in
19 through, you thought, the IT staff at the
20 Secretary of State's office and was not -- you
21 did not bring them in, and now you are saying
22 that they may well have been part of a bundled
23 service that GovTech provided to the Secretary
24 of State's office.

25 **A.** Your previous question really -- okay. One

1 part is introduction and how SmarTech was
2 introduced into the equation. Now we are moving
3 forward in time to 2004, and what I am saying is
4 I don't recall whether it was a direct contract
5 or it was through us.

6 Q. Okay.

7 A. But, again, it is not an uncommon practice
8 to ask a vendor who bundles services.

9 Q. Okay. Who was the point of contact or
10 points of contact at SmarTech for your work with
11 the Secretary of State?

12 A. I believe Jeff Averbeck was the primary and
13 I believe Alvin Garrison.

14 Q. Who worked -- Jeff Averbeck is the
15 President of SmarTech?

16 A. I -- yes.

17 Q. And what is Alvin Garrison's position, if
18 you know?

19 A. I do not know.

20 Q. Who worked on the project from SmarTech
21 with whom you or your firm interacted with?

22 MR. EPSTEIN: Objection.

23 MR. ERVIN: Objection as to
24 form. Can you --

25

1 **BY MR. ARNEBECK:**

2 **Q.** Besides Mr. Averbeck and Mr. Garrison, were
3 there others from SmarTech that you or other
4 personnel at GovTech would have regularly
5 interacted with?

6 **MR. ERVIN:** In relation to --

7 **MR. ARNEBECK:** -- the work with
8 the Secretary of State 2004.

9 **MR. ERVIN:** Just GovTech's
10 work?

11 **MR. ARNEBECK:** Right.

12 **THE WITNESS:** I do not know who
13 all would have been involved beyond those two.

14 **BY MR. ARNEBECK:**

15 **Q.** And who else besides yourself would be
16 involved in those -- in that work from GovTech
17 with SmarTech?

18 **MR. ERVIN:** Objection; form,
19 asked and answered. You may answer.

20 **THE WITNESS:** The primary
21 individual with probably the most exposure, the
22 most contact, would have been Mike Henry, who
23 was a contractor. Again, you know --

24 **BY MR. ARNEBECK:**

25 **Q.** Contractor, he is a GovTech person or a

1 contractor?

2 **A.** He was a contractor to GovTech.

3 **Q.** From what company is that?

4 **A.** It will come to me in a minute. They
5 change -- just like so many IT firms, they
6 changed ownership, changed names. It had
7 previously been Solutient. That is the problem
8 with these IT firms, they all come up with these
9 names. I will spell it to you on the next
10 break.

11 Anyway, the existing system relied heavily
12 on Oracle, and Mike Henry had an Oracle
13 background.

14 **Q.** Did your firm, that is, GovTech, provide
15 services on election night to the Secretary of
16 State?

17 **A.** Yes.

18 **Q.** Did you or members of your firm or firms
19 interact with the staff from SmarTech on
20 election night?

21 **MR. ERVIN:** Objection as to
22 form. Can you describe what you mean by
23 "interact"?

24 **BY MR. ARNEBECK:**

25 **Q.** Communicate, conduct business, coordinate

1 work.

2 **A.** Personally, no, for me, I did not. You
3 know, the one person who was on site from our
4 staff was Mike Henry. You know, he was down
5 there with the IT staff, basically he was doing
6 staff augmentation. So I cannot speak to that.

7 **Q.** And he would have been in Columbus at the
8 Secretary of State's office?

9 **A.** Yes.

10 **Q.** Would there have been anyone from your
11 company interacting with SmarTech in Tennessee
12 on election night?

13 **MR. ERVIN:** Is this 2004?

14 **BY MR. ARNEBECK:**

15 **Q.** Yes.

16 **A.** Which, from GovTech?

17 **Q.** GovTech.

18 **A.** No.

19 **Q.** And how about the media?

20 **A.** Not that I recall.

21 **Q.** Where were you on election night 2004?

22 **A.** Cleveland.

23 **Q.** Was Triad Corporation at any time a
24 subcontractor or service provider to any of your
25 companies?

1 **MR. EPSTEIN:** Objection to the
2 form.

3 **MR. ERVIN:** Objection; lack of
4 foundation as well.

5 **BY MR. ARNEBECK:**

6 **Q.** You can answer.

7 **A.** The only exposure to Triad was for a
8 centralized voter file project as a part of HAVA
9 compliance, to which we had a very minor role.
10 So the exposure would have been, you know, just
11 like our exposure to ES&S, and other people,
12 firms that had voter registrant applications,
13 software applications at the various Boards of
14 Elections, County Boards of Elections.

15 **Q.** And what would be the -- how would that
16 have originated?

17 **A.** Can you ask that differently?

18 **Q.** Well, did you -- did you seek bids for some
19 project or did you just choose Triad, just go to
20 Triad and say, "We would like you to do this for
21 us?

22 **MR. EPSTEIN:** Objection; no
23 foundation.

24 **MR. ERVIN:** I join in that
25 objection.

1 **THE WITNESS:** You are
2 misunderstanding. There were 88 separate
3 counties, and they all had existing applications
4 in place, and this was early on.

5 **MR. FITRAKIS:** By "applications,"
6 you mean --

7 **MR. ERVIN:** I am sorry, I don't
8 mean to be rude, but we should just have one
9 person asking the questions, please.

10 **THE WITNESS:** Voter registration,
11 voter files. And so, again, the object was HAVA
12 required a real-time central voter file. The
13 goal was to do that as cost effectively as
14 possible, without requiring a lot of retraining.

15 So the approach that was taken was to
16 leverage the existing applications, and
17 basically have them, basically, you know, mirror
18 all their data to one central file in Columbus.

19 So the ES&Ses and the Triads of the
20 world were picked by virtue of the market share,
21 by the fact that they had already gone out and
22 independently earned the business of individual
23 Boards of Elections.

24 **BY MR. ARNEBECK:**

25 **Q.** And so you were, in effect, incorporating

1 their existing working relationships into the
2 project that you were undertaking as GovTech?

3 **A.** Their existing applications were being --
4 and let me be clear. This is a voter
5 registration system. Okay? Strictly voter
6 registration system. Their voter registration
7 data was being basically consolidated in
8 Columbus into a centralized file.

9 **Q.** And GovTech was managing that process?

10 **A.** No. We had -- our role was actually a
11 very, very, very minor role in the whole
12 process. Again, the objective was to come up
13 with a cost effective solution that did not
14 require a lot of retraining, a lot of new
15 software, a lot of new hardware.

16 **Q.** But this was a function that GovTech had
17 with the Secretary of State's office, above and
18 beyond the Web hosting, as you described it?

19 **A.** It was a separate contract.

20 **Q.** Okay. And what precisely was the contract,
21 to centralize the -- assist the Secretary of
22 State's office in providing a centralized
23 database, voter registration database as
24 provided under HAVA?

25 **MR. ERVIN:** We are still under

1 seal.

2 **THE WITNESS:** It was really to,
3 you know, in the broadest sense, it was kind of
4 the big thought, "Okay, let's arrive --" there
5 was a lot of people out there that had very,
6 very, very expensive systems.

7 But HAVA had not been completely
8 defined. It was kind of like, "Here is HAVA, go
9 implement HAVA." However, there was -- the
10 Secretary of State wanted to be careful as to
11 not make a bad decision, invest a lot of money
12 in Solutient that might later prove not to be
13 HAVA compliant.

14 So the objective was to put them more
15 on a glide slope, so that they could be
16 compliant and minimize the risk of wasting a lot
17 of money. So it was more in a big picture role
18 like that.

19 **BY MR. ARNEBECK:**

20 **Q.** And what was the sequence, the Web design
21 contract or the registration database contract?

22 **A.** Boy, I don't know. What year did HAVA get
23 passed? HAVA wasn't passed until -- can anybody
24 help me out here?

25 **Q.** Well, it was after the 2000 election, 2002?

1 **A.** Yeah, but the implementation wasn't -- by
2 the time it was passed --

3 **MR. ERVIN:** HAVA was passed, I
4 think in 2002, I think.

5 **THE WITNESS:** I don't remember
6 the sequence. I mean, I can't -- I want to
7 think that this came later, after 2004.

8 **BY MR. ARNEBECK:**

9 **Q.** Okay. That makes sense, because my
10 understanding is Triad has a much heavier
11 responsibility in the registration database
12 currently than they did in 2004. So that would
13 make sense.

14 **MR. EPSTEIN:** Objection.

15 **BY MR. ARNEBECK:**

16 **Q.** Who was your appointed contact, or points
17 of contact at Triad for your work with the
18 Secretary of State of Ohio?

19 **MR. ERVIN:** Objection; form,
20 lack of foundation.

21 **THE WITNESS:** We had limited
22 exposure to them. I don't really -- I don't
23 recall.

24 **BY MR. ARNEBECK:**

25 **Q.** Would it be safe to say it was a member of

1 the Rapp family?

2 MR. ERVIN: Objection; lack of
3 foundation.

4 MR. EPSTEIN: Same objection.

5 MR. ERVIN: You may answer, if
6 you know.

7 THE WITNESS: Now, when you say,
8 "You may answer," I don't --

9 MR. ERVIN: If I make an
10 objection, unless I tell you specifically, "Do
11 not answer," you may answer his questions to the
12 best of your knowledge.

13 THE WITNESS: Yeah, but "You may
14 answer," is different than, "You should or
15 should not answer."

16 MR. ERVIN: Do you need to
17 speak with me? If you do just -- do we need to
18 talk?

19 THE WITNESS: No.

20 MR. ERVIN: Could we go off the
21 record for a moment, please.

22 (Thereupon, a discussion was held off
23 the record.)

24 BY MR. ARNEBECK:

25 Q. You were going to answer?

1 **A.** Can you re-ask the question?

2 Q. Who was the point of contact, or did you
3 answer that? Would you read back the last
4 question?

5 (Thereupon, the Reporter read the
6 record as requested.)

7 BY MR. ARNEBECK:

8 **Q.** Then I asked, would it be safe to say it
9 was a member of the Rapp family?

10 **MR. ERVIN:** Objection; lack of
11 foundation.

12 **MR. EPSTEIN:** Same objection.

13 **MR. ERVIN:** You may answer.

14 **THE WITNESS:** One of their
15 representatives was a Rapp, but I don't remember
16 his name.

17 BY MR. ARNEBECK:

18 Q. And who worked on the project from Triad
19 insofar as your personal knowledge or your
20 understanding from your employees telling you
21 who they were working with?

22 MR. EPSTEIN: Object to the form.

23 **THE WITNESS:** We didn't -- it
24 wasn't that sort of project. There wasn't
25 really -- our employees would not have had

1 exposure to Triad. It was more of collecting
2 information surrounding their system
3 requirements.

4 Really what we were doing was making
5 sure that the various applications would be
6 compatible with the solution being discussed.

7 **BY MR. ARNEBECK:**

8 **Q.** But you were not interacting with Triad
9 personnel as such, you are saying that it would
10 be -- like, it would be through the Secretary of
11 State staff that these communications would be
12 occurring?

13 **MR. ERVIN:** Objection; form and
14 lack of foundation. You can answer.

15 **THE WITNESS:** We weren't an
16 implementer, so there really was no exposure
17 beyond the requirements gathering.

18 **BY MR. ARNEBECK:**

19 **Q.** Okay. Is the architecture map that we have
20 marked as Deposition Exhibit 1 an accurate
21 architecture of the system that was built for
22 the 2004 election, to the best of your
23 knowledge?

24 **MR. ERVIN:** Objection; lack of
25 foundation. You may answer.

1 **MR. EPSTEIN:** Join the objection.

2 **THE WITNESS:** I cannot speak to
3 the accuracy. I mean, I didn't create this, my
4 staff didn't create it.

5 **BY MR. ARNEBECK:**

6 **Q.** With respect to V.J. Masson, indicated as
7 primary and Alan Dillman as secondary for
8 technology issue escalation and resolution
9 decisions, do you know who those folks are?

10 **MR. ERVIN:** I am sorry, where
11 are you?

12 **MR. ARNEBECK:** At the top of the
13 page on Exhibit Number 1.

14 **MR. ERVIN:** Oh, thank you.

15 **THE WITNESS:** Yes.

16 **BY MR. ARNEBECK:**

17 **Q.** And who are they?

18 **A.** V.J. was a member of the staff for the Ohio
19 Secretary of State. Alan Dillman was a
20 contractor.

21 **Q.** And what company was Alan Dillman
22 associated with?

23 **A.** His company is GCR, Limited.

24 **Q.** And do you know if Mr. Dillman has any
25 other associations that you are personally aware

1 of?

2 **MR. EPSTEIN:** Objection; form and
3 foundation.

4 **MR. ERVIN:** I join in that
5 objection.

6 **BY MR. ARNEBECK:**

7 **Q.** Are you aware of his role at Cedarville
8 University?

9 **MR. ERVIN:** Objection; outside
10 the scope. Do not answer that question.

11 **BY MR. ARNEBECK:**

12 **Q.** Is this the kind of a map that you have
13 some sense for what it is describing and how it
14 purports to describe a system of which GovTech
15 was a part in 2004?

16 **MR. ERVIN:** Objection; lack of
17 foundation. You may answer.

18 **MR. EPSTEIN:** Same objection, and
19 object to the form.

20 **THE WITNESS:** I am familiar with
21 schematics like this in general, yes.

22 **BY MR. ARNEBECK:**

23 **Q.** Can you identify where any security
24 features were built into the system by your firm
25 or anyone else to protect the accuracy of the

1 processing of votes?

2 **MR. ERVIN:** Objection; form and
3 lack of foundation. You may answer.

4 **MR. EPSTEIN:** Same objection.

5 **MR. ERVIN:** You may answer, if
6 you can.

7 **THE WITNESS:** Again, I want to
8 reiterate, this is not a tabulation system. All
9 this was designed to do is take the 88
10 individual county results, in total -- again,
11 the purpose of this was a brief window on
12 election night when all the world is kind of
13 following the horse race and trying to figure
14 out what the results are in Ohio.

15 So, you know, rather than -- members
16 of the media, citizens of Ohio, don't want to go
17 to 88 different sites and see the public
18 results, they want to go to one place. So it is
19 taking the public results as they are currently
20 being reported and aggregating them into totals.

21 So, you know, it is not like we are
22 protecting nuclear secrets here, is what I am
23 trying to say. But, you know, also, this is a
24 schematic diagram, it is not -- it is more of a
25 hardware configuration. I don't think its

1 purpose is to convey security.

2 **BY MR. ARNEBECK:**

3 **Q.** So you are saying that there could have
4 been security systems that are part of this
5 Secretary of State's data processing that are
6 not displayed on this map?

7 **MR. ERVIN:** Objection; form and
8 lack of foundation.

9 **MR. EPSTEIN:** Objection.

10 **MR. ERVIN:** You can answer, if
11 you can.

12 **THE WITNESS:** Yes. I mean, it is
13 certainly possible that they -- I mean, the
14 purpose of this is not -- yes, it is a simple
15 diagram.

16 **BY MR. ARNEBECK:**

17 **Q.** And are you aware of any such systems?

18 **MR. EPSTEIN:** Objection;
19 foundation.

20 **MR. ERVIN:** Systems being
21 security systems?

22 **MR. ARNEBECK:** Yes.

23 **THE WITNESS:** Does a major Ohio
24 agency have security in place to protect their
25 IT and data? Absolutely. But I cannot speak to

1 what is not on here.

2 **BY MR. ARNEBECK:**

3 **Q.** Okay. What is your understanding with
4 respect to the question of whether a SmarTech
5 computer in this configuration would be capable
6 of sending instructions, receiving instructions
7 and receiving information from both the county
8 level tabulators and the computers of the
9 Secretary of State's office?

10 **MR. ERVIN:** Objection as to
11 form and lack of foundation.

12 **MR. EPSTEIN:** Join the
13 objections.

14 **THE WITNESS:** You need to break
15 that question up.

16 **MR. ERVIN:** Do you understand
17 the question?

18 **THE WITNESS:** No.

19 **BY MR. ARNEBECK:**

20 **Q.** This goes to this man in the middle
21 concern. It is the understanding of our expert
22 that the SmarTech computer shown in this
23 configuration would be capable of sending
24 instructions, receiving instructions and
25 receiving information from both the county level

1 tabulators and the computers at the Secretary of
2 State's office. Is that your understanding of
3 this system as well?

4 **A.** No. Again, so you guys are clear, this is
5 not connected to the tabulators in any way.

6 **Q.** Have you read Mr. Spoonamore's declaration,
7 either of his two declarations or both, that
8 were filed in regard to our litigation over your
9 motion to quash the subpoena?

10 **A.** I have read the one that counsel provided
11 to me. I am not sure I am aware of a second.

12 **Q.** Okay. You are familiar with his assertion
13 that this structure appears to be conducive to a
14 man in the middle manipulation that he sees in a
15 commercial context?

16 **MR. ERVIN:** Just be clear, the
17 structure you are referring to is what is
18 conveyed in Exhibit 1.

19 **MR. EPSTEIN:** I am going to
20 object for lack of foundation.

21 **MR. ERVIN:** I join in that
22 objection. Can you read that question back,
23 please.

24 (Thereupon, the Reporter read the
25 record as requested.)

1 **MR. ERVIN:** Renew the objection
2 to form and foundation.

3 **MR. EPSTEIN:** Same objections.

4 MR. ERVIN: You may answer.

5 THE WITNESS: No.

6 BY MR. ARNEBECK:

7 **Q.** Did your firm hire any subcontractors or
8 work with any technology or consulting companies
9 or individuals beyond SmarTech and Triad?

10 **MR. ERVIN:** This is under seal.
11 I am going to object to the lack of foundation.

12 I think he stated he did not hire
13 Triad. And I guess I need some context when you
14 say "hired SmarTech."

15 **MR. ARNEBECK:** He indicated that
16 he may have hired SmarTech and that he did hire
17 Triad and it may be later than the 2004
18 election.

19 **MR. FITRAKIS:** There was also some
20 discussion about the GCR and Dillman as well,
21 that relationship, it was clearly on here.

22 **MR. EPSTEIN:** So you are asking
23 about hires at any time?

24 **MR. ARNEBECK:** No, we are talking
25 about the 2004 election.

1 **MR. ERVIN:** He identified
2 Dillman as a contractor from a company GCR,
3 Limited. If I am correct, I don't believe he
4 stated he hired Dillman.

5 **MR. ARNEBECK:** I didn't say that.
6 I am asking, did he hire any subcontractors that
7 worked with any technology or IT consulting
8 company beyond SmarTech and Triad.

9 **MR. EPSTEIN:** Object to the form.

10 **MR. ERVIN:** I agree with that
11 objection. You can answer it.

12 **THE WITNESS:** I mean, again,
13 their points are valid, because your question
14 assumes something that is -- but, anyway,
15 Solutient was previously mentioned.

16 **BY MR. ARNEBECK:**

17 **Q.** But not Dillman's company?

18 **A.** No.

19 **Q.** Was this architecture reflected on Exhibit
20 1 ever discussed or shared with any parties
21 outside the Secretary of State's office and any
22 subcontractor that you hired?

23 **MR. EPSTEIN:** Objection.

24 **MR. ERVIN:** Objection; lack of
25 foundation. He has already indicated he didn't

1 prepare this document and he may not have seen
2 it prior to Friday. You can answer the
3 question, if you can.

4 **THE WITNESS:** No.

5 **BY MR. ARNEBECK:**

6 **Q.** When the Ohio recount for the 2004 election
7 was undertaken, were you or your firm asked to
8 make any changes to the Secretary of State's
9 systems or any related systems involved in the
10 Secretary of State's work on the recount?

11 **A.** No.

12 **Q.** Were you aware of the effort by Triad
13 Systems to remove hard drives from county
14 tabulators after the 2004 election, but before
15 the recount of the election?

16 **A.** No.

17 **MR. EPSTEIN:** Objection.

18 **MR. ERVIN:** Objection; lack of
19 foundation.

20 **MR. EPSTEIN:** Lack of foundation.

21 **MR. ERVIN:** You may answer.

22 **MR. ARNEBECK:** He already did.

23 **THE WITNESS:** I said, "No."

24 **BY MR. ARNEBECK:**

25 **Q.** Do you have any professional opinion in

1 regard to the propriety of removing hard drives
2 after the 2004 election?

3 **MR. ERVIN:** Objection. Do not
4 answer that question.

5 **MR. EPSTEIN:** Objection.

6 **MR. ERVIN:** It is outside the
7 scope of the judge's order.

8 **MR. ARNEBECK:** I am sorry, did you
9 instruct him not to answer?

10 **MR. ERVIN:** Yes.

11 **BY MR. ARNEBECK:**

12 **Q.** Do you have any knowledge in any capacity,
13 personally or professionally, of what Triad did
14 with the removed hard drives in connection with
15 the recount of the 2004 election?

16 **MR. ERVIN:** Objection; lack of
17 foundation. He has already answered "no" to
18 that question in a different form.

19 **MR. EPSTEIN:** Join the objection.

20 **MR. ARNEBECK:** I didn't ask that
21 question.

22 **MR. ERVIN:** You said if he was
23 aware of removing hard drives. He said "no."

24 **MR. ARNEBECK:** I am asking now, he
25 might not be aware of removing hard drives, but

1 I am asking if he is aware of what happened to
2 the hard drives.

3 **MR. ERVIN:** You may answer, if
4 you know.

5 **THE WITNESS:** No.

6 **BY MR. ARNEBECK:**

7 **Q.** Are you aware of any computer systems
8 developed by your firm that are still in place
9 in the Ohio Secretary of State's office?

10 **A.** No.

11 **Q.** Are you aware of any system in place today,
12 through your contact in the industry, which is
13 capable of altering the outcome of a voting
14 result in an upcoming election?

15 **MR. ERVIN:** Objection. That
16 gets outside the scope of the judge's order.

17 **MR. ARNEBECK:** I am not asking for
18 his expert opinion. I am asking him of his
19 personal knowledge, is he aware of any system in
20 place today which is capable of altering an
21 outcome of a voting result in an upcoming
22 election.

23 **MR. ERVIN:** I renew the
24 objection. Answer the question, if you can.

25 **THE WITNESS:** No.

1 BY MR. ARNEBECK:

2 Q. To the extent that you have either direct
3 recollection of your conversations with
4 Mr. Spoonamore or from your understanding of
5 what he is saying about those conversations in
6 his declaration, do you share any of the
7 concerns that Mr. Spoonamore has expressed with
8 the security of electronic voting as in place in
9 2004, 2006 or in the upcoming election?

10 **MR. ERVIN:** Objection; outside
11 the scope of the judge's order. Do not answer
12 that question.

13 BY MR. ARNEBECK:

14 Q. Let me rephrase that question and limit it
15 to the scope of the 2004 Ohio election. Do you
16 share any of his concerns as he has expressed
17 directly to you or in his declaration that you
18 have reviewed as to the security of the system
19 that was in place in 2004 in Ohio?

20 **MR. ERVIN:** Objection; outside
21 of the scope of the judge's order. Do not
22 answer that question.

23 **MR. ARNEBECK:** Would you flag that
24 for discussion with the judge, that question and
25 instruction.

1 **MR. EPSTEIN:** If that is going
2 before the judge, I am going to join the
3 objection and also object to the lack of
4 foundation for the question.

5 **MR. ERVIN:** We will join in
6 that objection for the record.

7 **BY MR. ARNEBECK:**

8 **Q.** Are you familiar with a Trojan program that
9 an employee of one of your companies designed at
10 some time in the past?

11 **MR. EPSTEIN:** Objection; lack of
12 foundation.

13 **MR. ERVIN:** Objection; lack of
14 foundation, outside the scope of the judge's
15 order. Do not answer that question.

16 **BY MR. ARNEBECK:**

17 **Q.** Are you familiar with -- do you know of
18 your personal knowledge whether SmarTech was
19 hosting the Web site associated with the Swift
20 Boat campaign during the 2004 election?

21 **MR. ERVIN:** Objection; outside
22 the scope of the judge's order. Do not answer
23 that question. Also lack of foundation.

24 **BY MR. ARNEBECK:**

25 **Q.** Would you focus on the Exhibit marked

1 Deposition Exhibit 2.

2 (Witness complies with the request.)

3 **Q.** And would you describe your understanding
4 of your personal knowledge to what extent there
5 was a different picture in terms of the actual
6 operation of the system during the 2006
7 election?

8 **MR. ERVIN:** Objection; lack of
9 foundation.

10 **MR. EPSTEIN:** I join that
11 objection. I also object to the form of the
12 question.

13 **BY MR. ARNEBECK:**

14 **Q.** You can answer the question.

15 **A.** It was a simpler solution because it was an
16 off year election, it does not -- off years, you
17 don't -- it is not the same level of interest,
18 not the same amount of traffic.

19 **Q.** Was there a difference in the level of
20 outsourcing of the hosting of the system in the
21 2006 election?

22 **MR. ERVIN:** Objection; lack of
23 foundation.

24 **MR. EPSTEIN:** I join in the
25 objection.

1 **MR. ERVIN:** You may answer.

2 **THE WITNESS:** Not that I recall.

3 **BY MR. ARNEBECK:**

4 **Q.** Are you aware of any direct ties of this
5 system to Cedarville University in the 2006
6 election?

7 **MR. ERVIN:** Objection; outside
8 the scope of the judge's order.

9 **MR. EPSTEIN:** I join the
10 objection and object for lack of foundation.

11 (Pause.)

12 **MR. EPSTEIN:** You didn't instruct
13 him not to answer.

14 **MR. ERVIN:** I am sorry, do not
15 answer that question.

16 **BY MR. ARNEBECK:**

17 **Q.** Same question with respect to the 2004
18 election year. Are you aware of any direct ties
19 to Cedarville University to this system in the
20 2004 election in Ohio?

21 **MR. ERVIN:** Objection. Do not
22 answer that question, outside the scope of the
23 judge's order, lack of foundation.

24 **BY MR. ARNEBECK:**

25 **Q.** Okay. In the exhibit Mr. Dillman, who was

1 associated with Cedarville University, is listed
2 in a secondary role in the system. And we are
3 talking about man in the middle, we are talking
4 about conflicts of interest. My question is
5 within the scope of the judge's instruction, and
6 I would like to know if you know whether
7 Mr. Dillman, in his role within this system, has
8 any -- his involvement results in any connection
9 to Cedarville University, to the flow of this
10 system in the 2004 election.

11 **MR. EPSTEIN:** Object to the form,
12 object for lack of foundation.

13 **MR. ERVIN:** I join in that
14 objection. For clarification, we were looking
15 at Exhibit 2. Are we back to Exhibit 1 now?

16 **MR. ARNEBECK:** Yes, back to
17 Exhibit 1.

18 **MR. ERVIN:** I am going to
19 object to that question as outside the scope of
20 the judge's order as it pertains to the extent
21 of which one of these vendors or contractors may
22 be involved in an outside entity. I would
23 instruct you not to answer that question.

24 **MR. ARNEBECK:** Okay. Mark that as
25 another question for the judge.

1 **BY MR. ARNEBECK:**

2 **Q.** Are you aware of Cedarville University as
3 perhaps being by reputation a right-leaning
4 religious university?

5 **MR. ERVIN:** Objection; lack of
6 foundation and outside the scope of the judge's
7 order. Do not answer that question.

8 **MR. ARNEBECK:** Why don't we call
9 the judge and see if we can get some help on
10 these, I think, is it two questions?

11 But short of that, did you want to
12 inquire of anything?

13 **MR. EPSTEIN:** I do not intend to
14 inquire.

15 **MR. ARNEBECK:** Do you want to do
16 any Redirect, or should we just make a call? I
17 would like to get the judge's instructions.

18 **MR. ERVIN:** I have no Redirect.
19 I have got, I think there is a total of -- I
20 have got a total of four issues for the judge.
21 Do you want to address all four or just the
22 Cedarville questions?

23 **MR. ARNEBECK:** What do you have,
24 Jim?

25 **MR. ERVIN:** It goes back to

1 putting under seal the discussions about whether
2 or not -- what I am about to say, I would ask to
3 put under seal.

4 **MR. ARNEBECK:** That's right, we
5 had two discussions where I indicated all we
6 were talking about was routine business
7 dealings. There was no discussion of any
8 particular marketing method or any, you know,
9 secrets.

10 **MR. ERVIN:** I have four we need
11 to address with the judge.

12 **MR. ARNEBECK:** The last two are
13 specific questions?

14 **MR. ERVIN:** Right.

15 (Thereupon, a discussion was held off
16 the record.)

17 (Thereupon, the telephone conference
18 with Judge Oliver commenced at 2:10
19 o'clock p.m.)

20 **THE COURT:** This is Judge
21 Oliver.

22 **MR. ERVIN:** Hello, Your Honor.
23 This is James Ervin on behalf of Michael
24 Connell. I also have here Cliff Arnebeck and
25 Robert Fittrakis on behalf of the Plaintiffs and

1 Aaron Epstein with the Attorney General, on
2 behalf of Jennifer Brunner, the Secretary of
3 State.

4 **THE COURT:** My deputy told me
5 you had some questions about the scope of my
6 order. You do have a court reporter there,
7 right?

8 **MR. ERVIN:** Yes, sir, and she
9 is -- we have a court reporter, and she is
10 taking down this discussion with you, Your
11 Honor.

12 **THE COURT:** Okay. I wanted to
13 make sure, because I don't have one here, so,
14 all right. Go ahead.

15 My deputy told me generally. But go
16 ahead, and I will take them one at a time.

17 **MR. ERVIN:** Thank you, Your
18 Honor. This is James Ervin on behalf of Mr.
19 Connell. There are four issues -- one second,
20 Your Honor.

21 **THE COURT:** Sure.

22 **MR. ERVIN:** Thank you. We had
23 a small technical glitch. Ironical enough.

24 This is James Ervin on behalf of
25 Mr. Connell. There are four issues, Your Honor,

1 I will try and summarize, and I would definitely
2 want Mr. Arnebeck to assist and make sure I
3 clarify this properly.

4 The first issue is, during the course
5 of the deposition, Mr. Arnebeck asked a question
6 of Mr. Connell regarding his conversations with
7 his client, the Secretary of State, about a
8 vendor named SmarTech, and addressing the issue
9 as to how SmarTech became a vendor on behalf of
10 the Secretary of State.

11 I asked that that question and the
12 questions and answers from that be sealed. The
13 Secretary of State is a client of my client's,
14 and I was concerned that any conversations he
15 had as to how they do business or
16 recommendations he may have had could address
17 proprietary information strategies or other
18 issues that may provide them a competitive edge
19 in the marketplace. Mr. Arnebeck disagrees with
20 that, and I will let Mr. Arnebeck address his
21 position.

22 **THE COURT:** All right.

23 **MR. ARNEBECK:** Yes, Your Honor.

24 The discussion that followed this has nothing to
25 do with any kind of unique marketing scheme or

1 design or technical information of the kind that
2 is normally treated as a trade secret.

3 It merely dealt with the
4 communications concerning the setup in the
5 Secretary of State's office and the conduct of
6 public business. And we don't think it has
7 anything to do with trade secrets.

8 **THE COURT:** All right. Let me
9 go back to Mr. Ervin. The concern is that your
10 client, Mr. Connell, has the Secretary of State
11 as a client, your concern about confidences
12 between the two of them, is that what you are
13 concerned about?

14 **MR. ERVIN:** Yes, Your Honor.

15 **THE COURT:** May we have the
16 Assistant Attorney General Epstein who is
17 representing Secretary of State at this point in
18 time, do you have any comment on that?

19 **MR. EPSTEIN:** Thank you, Your
20 Honor. I believe it has been our office's
21 position, at least with respect to the issue of
22 what goes under seal, that we were not going to
23 take a position in that, that we were going to
24 let the other parties work that out as they saw
25 fit.

1 **THE COURT:** Okay. You are
2 representing the Secretary of State; is that
3 right?

4 **MR. EPSTEIN:** That is correct,
5 Your Honor. But the issue with respect to the
6 trade relationship would be the witness
7 Mr. Connell's concern. I don't know that the
8 Secretary of State has any proprietary or trade
9 information that she is concerned about, about
10 safeguarding this context. So I don't think we
11 have a position on the question.

12 **THE COURT:** Okay. If
13 Mr. Connell is not worried about the Secretary
14 of State, and the Secretary of State has no
15 concerns regarding confidences, then I would say
16 there is no reason to seal that. That would be
17 my ruling.

18 **MR. ERVIN:** Thank you, Your
19 Honor.

20 The next three issues, Your Honor,
21 are all related. There is an exhibit before
22 Mr. Connell, it is the same Exhibit I that was
23 attached to the memorandum in opposition filed
24 by the Plaintiffs.

25 It is a schematic, or purports to be

1 a schematic of the Election Production System
2 Configuration for Web Results, related to the
3 2004 election.

4 There is an individual listed on that
5 document, a gentleman named Alan Dillman, who is
6 a vendor, related to that system. Mr. Arnebeck
7 presented a series of questions as to whether
8 Mr. Connell could comment on Mr. Dillman's
9 involvement with -- if Mr. Connell could comment
10 on Mr. Dillman's involvement with the Secretary
11 of State's office, as well as his involvement
12 with Cedarville University, which Mr. Arnebeck
13 characterized as a possible right wing leaning
14 educational institution.

15 I objected to that series of
16 questions as it is, I believe, outside the scope
17 of the court's order. Mr. Dillman's
18 relationship with an educational institution,
19 regardless of its affiliation, we would contend
20 is not pertinent to the scope of the inquiry
21 that we are here about today.

22 In addition, there was a previous
23 question regarding Mr. Connell's familiarity
24 with Mr. Dillman. Mr. Connell indicated he was
25 aware that Mr. Dillman was a vendor, but

1 otherwise, did not have, I believe, specific
2 involvement with him.

3 So we objected to that series of
4 questions relating to Mr. Dillman and Cedarville
5 University and how that relates to the 2004
6 election.

7 **THE COURT:** All right.

8 **MR. ARNEBECK:** Your Honor, Cliff
9 Arnebeck on behalf of the Plaintiffs.
10 Mr. Dillman is listed as the person in secondary
11 control of the Secretary of State's Web site and
12 tabulation and so forth activities, at the
13 Secretary of State's office in November 2004.

14 We have information that he is a
15 gentleman that runs a company called GCR,
16 Limited, but he is also a professor at this
17 Cedarville University, and we understand that
18 there was a direct connection between the
19 Secretary of State's office and Cedarville
20 University on election night 2004, and we feel
21 that the probing of Mr. Connell's knowledge of
22 this, in his capacity in this system, is within
23 the scope of your advice to us that we were free
24 to explore the man in the middle in the Ohio
25 2004 election.

1 We submit that Mr. Dillman and his
2 connection to Cedarville is one aspect of a
3 possible man in the middle situation that we
4 should be able to probe Mr. Connell's personal
5 knowledge of that subject.

6 **MR. ERVIN:** Your Honor, this is
7 James Ervin again, on behalf of Mr. Connell. I
8 would comment that there was no foundation laid
9 as to Mr. Connell having some type of knowledge
10 about Mr. Dillman's relationship to Cedarville
11 University, there was no foundation laid to
12 support the position that Cedarville University
13 was linked to the 2004 election in some way.

14 We believe the court's order was
15 clear that the questions were to avoid
16 speculation, to have Mr. Connell speculate or
17 provide unfounded opinions, and we believe that
18 those questions fall within that prohibition by
19 the court.

20 **MR. ARNEBECK:** Your Honor, if I
21 may, Cliff Arnebeck again. I did not ask for
22 Mr. Connell's expert opinion about a
23 hypothetical, if there were a connection, or if
24 Mr. Dillman had these relationships. I was
25 asking of his personal knowledge whether he had

1 knowledge of any such connections, any such
2 relationship, inasmuch as it is part of this map
3 of the structure in the Secretary of State's
4 office.

5 Mr. Dillman is part of the map and so
6 is Mr. Connell through GovTech.

7 **THE COURT:** Okay. Let me just
8 make a few comments and then maybe a few
9 clarifying questions, and I think we can get to
10 a quick resolution.

11 The man we are talking about is Alan,
12 is it Dillman?

13 **MR. ARNEBECK:** Yes, Your Honor.

14 **THE COURT:** Okay. He has some
15 involvement with the system that was used in
16 2004. Now, obviously the things that are
17 clearly in bounds is Mr. Dillman's role in that
18 process and any background information that
19 would bear on that.

20 I would be concerned about covering
21 other areas unless there was a foundation laid
22 and there is no question about it. You,
23 Mr. Arnebeck, said something about Cedarville
24 University, not only something about right wing
25 leaning, but it was somehow involved or

1 connected with the 2004 election or the
2 Secretary of State's office in that election.

3 I don't know enough -- I don't know
4 how I measure that. How does Cedarville
5 University become involved in this process?

6 **MR. ARNEBECK:** Mr. Fitrakis can
7 address that.

8 **MR. FITRAKIS:** Through Mr. Dillman
9 and on their Web site it was publicly displayed
10 that they were providing backup services for
11 SmarTech on that night, as well as people in the
12 Secretary of State's office who said there was a
13 direct connection on election night to
14 Cedarville University, which they also wrote
15 about on their Web site.

16 **THE COURT:** All right. You are
17 helping me some. But when you say "a direct
18 connection," you know, you have to understand --

19 **MR. FITRAKIS:** Transmission of
20 data.

21 **THE COURT:** That there was data
22 being transmitted by or to Cedarville University
23 relative to the 2004 election?

24 **MR. FITRAKIS:** Yes. And that
25 their students were monitoring the SmarTech

1 site, according to the Cedarville Web site, in
2 fact, they were very proud of their activity on
3 that night.

4 **THE COURT:** Now, that is
5 something they are being paid to do?

6 **MR. FITRAKIS:** We are not sure
7 whether he was doing it through his company or
8 in his capacity as a professor there. We know
9 there was a connection to the university.

10 **THE COURT:** What would be their
11 role, what would they be seeking to do or ensure
12 in their role, just explain that.

13 **MR. FITRAKIS:** Well, they on their
14 Web site indicated they were monitoring for
15 possible crashes of the site, and they were
16 looking at data transmissions.

17 **THE COURT:** Okay. Well, I
18 think your questions are going to have to -- I
19 am not saying they aren't, but they are going to
20 have to be focused as they relate to the
21 computer system 2004 and the election.

22 And so if you have got questions you
23 can ask based on information that you have
24 elsewhere, as long as you put those in a
25 pinpoint way to the witness, you can ask them.

1 But if he doesn't know the answer or
2 has no familiarity with it, then there is really
3 nowhere to go, so the question, one, would be
4 whether he knows Mr. Dillman, which I take it
5 the answer is "yes." What role did Mr. Dillman
6 play, if any, in the 2004 election, in the
7 system, the computer system that was involved
8 during that election.

9 I am not telling you exactly what
10 questions, but those seem to make all the sense
11 in the world.

12 And then the question is, does he
13 know -- you can ask him the question, does he
14 know whether he was employed by Cedarville
15 University or what have you, and does he know
16 whether Cedarville University played any role in
17 assisting Mr. Dillman or a backup in his system
18 and what is his knowledge about what role they
19 played, all those things seem appropriate.

20 Now, if on the other hand, a question
21 just got off into, you know, was it a right wing
22 university and down that line, without laying
23 any foundation, if you have some concerns about
24 what Cedarville was doing and you really had
25 some background information that suggested that

1 because of the nature of the university, the
2 kind of university they are, if they would have
3 incentives to do certain things during the
4 course of the election, that might be
5 permissible too. But it can't be an open-ended
6 process.

7 As long as you keep it tied to the
8 election and the questions that you ask are
9 somehow related to finding out information about
10 that, that this witness, Mr. Connell, may know
11 about. That is really what you have got, is his
12 knowledge.

13 I am not sure that is helpful. But
14 let me go back to Mr. Ervin, because I have kind
15 of laid out some guidance. But I want to go
16 back to you so I make sure I have addressed your
17 concerns. What do you think they are asking
18 about here that go beyond what I have just said?

19 **MR. ERVIN:** I think, Your
20 Honor, there were some questions that were asked
21 previously that inquired of Mr. Connell's
22 knowledge or involvement with SmarTech, and I
23 think his answers to that indicated that he did
24 not have a substantive involvement.

25 Obviously his answers speak for

1 themselves, but in addition, there were
2 questions about his relationship or rather
3 working relationship with Mr. Dillman. I think
4 these questions as to Mr. Dillman's involvement
5 with Cedarville, I think, go beyond his answers
6 and, because of a lack of foundation, I think do
7 not permit Mr. Arnebeck to continue to inquire
8 as to that involvement.

9 In addition, Mr. Arnebeck did make a
10 comment about Cedarville having right wing
11 leaning, I guess, philosophies, and I think that
12 all ties back into this political theory that I
13 think that we conveyed to the court on Friday is
14 being driven through Mr. Connell's desire by the
15 Plaintiffs to give testimony.

16 The relationship of Cedarville to
17 SmarTech, as to whether Cedarville is monitoring
18 election results, goes beyond what Mr. Connell
19 has indicated was his involvement with the 2004
20 election. He has clearly stated that his job
21 was to design and facilitate a Web site that
22 posted public information and did not get into
23 voting tabulation, that he has no ownership
24 interest in SmarTech. Neither he nor any of his
25 employees or anyone that he was aware of related

1 to his companies were on site at the SmarTech
2 facility in Tennessee.

3 So I think these questions about
4 Mr. Dillman's involvement with Cedarville
5 University and what Cedarville University did as
6 it relates to the election are outside the scope
7 of what the court has ordered.

8 I think this is an example of a
9 fishing expedition, and we would ask the
10 court -- we have instructed Mr. Connell not to
11 answer those questions and we would ask the
12 court to sustain the objection.

13 **MR. ARNEBECK:** Your Honor, if I
14 may? Cliff Arnebeck again for the Plaintiffs.
15 If I am not mistaken, while Mr. Ervin is
16 accurate in his description of Mr. Connell's
17 initial testimony in relation to SmarTech,
18 subsequently he indicated that SmarTech is the
19 company that he regularly has host, do the
20 server hosting on all of his business, his New
21 Media business, his political business, and that
22 the contract for the Secretary of State's office
23 with SmarTech may well have been a bundled
24 contract, where SmarTech was a subcontractor to
25 GovTech, which is Mr. Connell's company.

1 So this is relevant, it is within the
2 scope, and we would ask that we be permitted to
3 explore this within the scope of his honor's
4 ruling that we were free to explore with respect
5 to this man in the middle situation in this map
6 in the 2004 election.

7 If I may, Your Honor, I would like --
8 because of the fact that my co-counsel,
9 Mr. Fitrakis, has written several books on this
10 subject, I would ask that if his honor permits
11 this line of further questioning, that we be
12 able to, for this one area, that he be permitted
13 to ask the questions.

14 **MR. ERVIN:** Your Honor, this is
15 James Ervin on behalf of Mr. Connell. In all
16 due respect to Dr. Fitrakis, you know, we
17 addressed this on Friday, that there would be
18 one person asking questions, and the fact that
19 Mr. Fitrakis has written books about this or has
20 represented that the Plaintiffs have
21 information, there has been no such information
22 presented here to Mr. Connell that lays a proper
23 foundation for him to answer any questions about
24 Cedarville University or Mr. Dillman's relation
25 to that.

1 This is, again, the personal opinion
2 of the attorneys being pushed through this
3 procedure. As we indicated on Friday, the
4 political machinations of the Plaintiff should
5 not be facilitated through this legal process.

6 **THE COURT:** Okay. Mr. Arnebeck
7 said something about SmarTech and its contract
8 may have been bundled through or with a contract
9 for GovTech.

10 And that is Mr. Connell's company. I
11 guess the question is, what does he mean by
12 that, and did he have any knowledge of that?
13 Because if he didn't, and he had no relationship
14 that he was aware of between himself and
15 Mr. Dillman, then, of course, at some point that
16 questioning has to stop.

17 It may give you some information
18 which you can pursue further with the Secretary
19 of State or with somebody else, but the
20 interesting thing, I find very interesting that
21 some of these things can be gotten at in other
22 ways.

23 For example, Cedarville University,
24 whether it is a right wing leaning university,
25 that doesn't depend on any testimony by

1 Mr. Connell. If you got some sense that it is,
2 I am sure you could fairly quickly find that out
3 or you already have some ideas about that,
4 without using this as the basis for doing that.

5 I don't want to preclude you from
6 any, Mr. Arnebeck, from any area which naturally
7 flows from what I have allowed you to do, but I
8 would say that the fact that he has some
9 relationship to SmarTech in another context
10 doesn't necessarily make this a situation where
11 you can kind of do a free for all on SmarTech.

12 It seems to me what we are doing is
13 focusing on the 2004 election, and the question
14 is, what happened during 2004, and what
15 knowledge does this witness have that bears on
16 that in a nonspeculative way.

17 And so, you know, I am just
18 struggling here to try to give you the right
19 parameters. But if I were sitting there and I
20 were hearing the questions, I guess I would say
21 that when you get to the point where he says,
22 "What Mr. Dillman did really had no relationship
23 to what I was doing," that I had no -- if he
24 were to say, "I had no knowledge, particular
25 knowledge, specific knowledge of what

1 Mr. Dillman was doing during the election, I
2 don't know whether Cedarville was backing him
3 up, and I have no independent knowledge of any
4 of those matters," then it would seem to me that
5 you would have to stop.

6 I mean, I suppose for purposes of
7 discovery, if he says, "I do know X, Y and Z,"
8 so it turns out that it is not something that is
9 admissible, but would lead to admissible
10 information, that might be a possibility as
11 well. But it is not open-ended. You have got
12 to have some basis for further pursuing his
13 information.

14 So I think discovery -- I know
15 discovery would be broader than what is
16 admissible. But at the same time, you can't
17 just put it to a witness and ask him to
18 speculate. Let me see if I can just lay down a
19 rule here.

20 Where are you now? I guess what else
21 do you want to ask him that might be more
22 beneficial than where we have been, or what
23 questions were asked that were not answered?
24 Either way.

25 **MR. ARNEBECK:** What was the other

1 question? You had a list, Jim.

2 **MR. ERVIN:** I think, Your
3 Honor, there were four points. The questions
4 regarding Cedarville comprise three of those
5 four points. I think the court addressed the
6 first issue and said that that would not be
7 under seal. We instructed our client not to
8 answer three questions related to the Cedarville
9 issue, and I don't believe that there are other
10 matters that have been contested about sealing
11 the record, Your Honor.

12 **THE COURT:** Okay. Other than
13 whether Cedarville is a right wing leaning
14 university and Mr. Dillman's relationship to it,
15 what else is outstanding that you instructed him
16 not to answer?

17 **MR. ARNEBECK:** There was a
18 question, Your Honor, I asked if he was aware
19 that the Swift Boat campaign was being hosted on
20 the SmarTech servers in Chattanooga, Tennessee,
21 along with all the other Republican
22 organizations. And he was instructed not to
23 answer that question.

24 **MR. ERVIN:** This is James
25 Ervin, Your Honor, that is correct. And I think

1 that question, Your Honor, was an issue that
2 Mr. Arnebeck raised during the hearing on
3 Friday, and the court stated then that that was
4 outside the scope of today's deposition. We
5 believe that clearly falls outside your order,
6 Your Honor.

7 **THE COURT:** Okay. Anything
8 else?

9 **MR. ARNEBECK:** I believe that is
10 all, Your Honor.

11 **THE COURT:** Okay. Just one
12 moment.

13 (Pause.)

14 **THE COURT:** Mr. Arnebeck, how
15 would this SmarTech hosting -- what did you say?

16 **MR. ARNEBECK:** Swift Boat Veterans
17 for Truth.

18 **THE COURT:** What issue does
19 that go to in regard to the 2004 election, as it
20 relates to your case?

21 **MR. ARNEBECK:** Well, the whole
22 point was to explore this man in the middle and
23 SmarTech as a possible man in the middle. And
24 the point is that they are hosting the George W.
25 Bush for President campaign, the Republican

1 National Committee's campaign, a whole bevy of
2 other Republican partisan campaigns.

3 And Swift Boat Veterans for Truth, if
4 you recall, Your Honor, was one of these phony
5 front groups that was attacking John Kerry on
6 the theory that it was independent of the
7 campaign. But it is on one side of the
8 campaign, there is no question about that.
9 Whether it is independent is another question.

10 But it shows that this SmarTech that
11 is performing this backup function, supposedly
12 for the Secretary of State's office, is itself a
13 fundamentally partisan organization, and very
14 well could be -- have the motive and opportunity
15 to be performing the corrupt man in the middle
16 function that Mr. Spoonamore, our expert
17 witness, is talking about.

18 **MR. ERVIN:** Your Honor, this is
19 James Ervin. Again, this is fishing and trying
20 to tie a bunch of different concepts together
21 and using this man in the middle concept as a
22 basis to ask a wide variety of questions.

23 **MR. ARNEBECK:** Your Honor, let me
24 cut to the short -- I will withdraw the
25 question, because we have this as a matter of

1 record, and whether Mr. Connell knows it or not,
2 he knows enough that solidifies my point.

3 So let's limit it to the inquiry in
4 regard to Cedarville's connection to this and
5 Mr. Dillman's role and Mr. Connell's personal
6 knowledge of that situation.

7 **THE COURT:** Okay. I think that
8 would be entirely appropriate then. That would
9 solve the issue, because that is, I think, where
10 I should be.

11 All right. Anything further?

12 **MR. ARNEBECK:** May Mr. Fittrakis
13 ask the questions on this one line of
14 questioning, Your Honor?

15 **MR. ERVIN:** Your Honor, we
16 would object to that. We addressed this with
17 the court on Friday that it is one person asking
18 the questions on behalf of the Plaintiffs.

19 **THE COURT:** All right. I would
20 like to continue with what we said,
21 Mr. Arnebeck, but you can -- I will give you an
22 extra ten minutes, if you want to confer with
23 him about areas to ask. You can obviously
24 confer with him as you go.

25 **MR. ARNEBECK:** Right.

1 **THE COURT:** I will give you an
2 extra ten on top of what you have, if you want
3 to confer with him on that.

4 **MR. ARNEBECK:** Thank you, Your
5 Honor. I want it noted for the record, that we
6 were completed, our deposition, except for this
7 discussion with his honor at 2:00. So we kept
8 within our bounds.

9 THE COURT: All right.

10 **MR. ERVIN:** Your Honor, I guess
11 I would ask the court that Mr. -- these last
12 questions regarding the Cedarville issues will
13 be the last questions asked for the purposes of
14 the deposition. I think that we --

15 **THE COURT:** I think that is
16 what Mr. Arnebeck was representing, that he was
17 essentially done except for these; is that
18 right?

19 **MR. ARNEBECK:** That's correct,
20 Your Honor.

21 **THE COURT:** All right. Now,
22 let me just make one other comment. I was
23 thinking about when you asked me about sealing
24 the record, which, of course, I ruled on the
25 other day. Ultimately, depositions don't

1 necessarily get filed over here in court, simply
2 because they have been taken. There is no
3 requirement that that happen.

4 So ultimately, when you go back to
5 Judge Marbley, I guess the question is, once
6 this is done, he may have some views on how this
7 can be used, if at all, in his case, and what
8 rules should attach to that. So I just make
9 that comment, because that is something I
10 thought of.

11 **MR. ERVIN:** Your Honor, this is
12 James Ervin on behalf of Mr. Connell. I guess
13 for procedural purposes, would we have a
14 deposition filed with you under seal and then
15 transferred to Judge Marbley, to address how
16 those unsealed portions are set forth in a
17 separate document?

18 **THE COURT:** You know, I am not
19 even sure -- candidly, I am not sure you want to
20 file it with me. It is not a public record, and
21 at that time, I don't know what the best process
22 is.

23 **MR. ERVIN:** Then I would offer
24 this suggestion, Your Honor, once the deposition
25 is completed, since there are portions that we

1 have asked to be placed under seal, that have
2 not been objected to by Plaintiff's counsel, we
3 would ask that the entire deposition be filed
4 under seal, that the parties to the deposition
5 be held to a gag order in effect until the
6 parties can address the deposition with Judge
7 Marbley and let him make a decision as to how
8 its contents can be released to the public, for
9 lack of a better phrase.

10 **MR. ARNEBECK:** Your Honor, if I
11 may address this, this is Cliff Arnebeck for the
12 Plaintiffs. Your Honor has ruled on the sealing
13 of the discussions with the Secretary of State.
14 So the only matter that by agreement is under
15 seal is my question and Mr. Connell's answer in
16 regard to whether or not there has been an
17 attempt to intimidate him as a witness in this
18 case.

19 That is the only thing that is at
20 issue as being under seal, and we are in
21 agreement. So there is no reason to place
22 anything else under seal.

23 **MR. ERVIN:** Your Honor, there
24 has been a series of questions and some
25 questions based upon Mr. Connell's answers, I

1 think those lines of questions that relate to
2 the scope that the court set forth were
3 indicated to be under seal, that Plaintiff's
4 counsel did not object to those, and those
5 haven't been presented to the court.

6 And I would ask that until we can
7 have the -- have the deposition transcribed and
8 address this with Judge Marbley, that no portion
9 of the deposition be released to the public by
10 any of the attorneys until we can address this
11 with Judge Marbley.

12 Obviously, Your Honor, there are
13 portions of the deposition that we have not
14 asked to be under seal that we believe fall
15 within the scope of the court's order.

16 But until we can find a mechanism by
17 which you can parcel out those sealed portions
18 and not sealed portions, I think until Judge
19 Marbley can address that, no portion of the
20 deposition should be released.

21 I think, as we have indicated to the
22 court, this close to the election, with some of
23 the things that Mr. Connell has gone through
24 prior to his deposition being taken and related
25 to his deposition, I don't think the Plaintiffs

1 are prejudiced by addressing this issue with
2 Judge Marbley and letting Judge Marbley come up
3 with a mechanism for releasing those unsealed
4 portions.

5 I mean, it is going to get out there,
6 but I think until Judge Marbley decides how to
7 do it, I think all the parties' interests are
8 protected and none would be burdened by that
9 process.

10 **THE COURT:** Well, you know, I
11 have got, as I said before, kind of a delicate
12 role here. But part of my responsibility is to
13 make sure that trade secrets are protected, also
14 to make sure that if information, for example,
15 such as possible threats and so forth are
16 revealed, that that would not create problems
17 for Mr. Connell. When I say problems for him, I
18 mean possible problems with threats or other
19 kinds of things in the context of this election.

20 On the other hand, you know, there is
21 the common practice that depositions and trial
22 testimony not be sealed because of the public
23 interest. I would have a concern that there may
24 actually be public entities that may very well
25 be interested.

1 I am not into drumming up any
2 publicity, anybody who knows me would
3 understand. But at the same time, you know, I
4 have got to be sure that I protect, strike the
5 right balance.

6 When I was talking about Judge
7 Marbley, what I am saying is when we get back to
8 the case in a different context in which this
9 information may be raised, whether it is a
10 summary judgment motion or a motion for class
11 certification or whether it is in another
12 context, those rulings will be for Judge
13 Marbley. He may very well determine in a
14 defined context that certain information is
15 relevant or not relevant, what have you.

16 But I am not inclined to go beyond
17 what I did the other day, and that is to say
18 that the information relative to any threat be
19 not disseminated, and that is an order of this
20 court, that the parties not do that.

21 So it is not a suggestion, that is an
22 order. And that if there are any trade secret
23 information issues or problems, that, again,
24 that not be revealed. That is an order. It is
25 not a suggestion.

1 So I don't think I can go any further
2 than that. So if the order is disobeyed, then
3 there are sanctions which can be meted out, and
4 I would not hesitate to do so under proper
5 circumstances. That is the best I can do.

6 So I would like the parties to go
7 back and complete the deposition, and let me say
8 that I do commend you on both sides for your
9 professionalism and the way you have conducted
10 yourself in the light of issues that I know are
11 of not only emotional importance to both sides,
12 but which does cause people to become tense and
13 excited, especially in the context of an
14 election season. So I do appreciate your
15 professionalism.

16 **MR. ERVIN:** Thank you, Your
17 Honor.

18 **MR. ARNEBECK:** Thank you, Your
19 Honor.

20 **MR. ERVIN:** I guess as a final
21 question, Your Honor, in compliance with the
22 court's order about what is sealed and not
23 sealed, what recommendation does the court have
24 for logistically being able to pick apart the
25 deposition, where it is scattered throughout

1 different questions that pertain to different
2 issues?

3 **THE COURT:** Well, the main
4 issue, I thought, would have been covered at one
5 time. I don't know, because I don't have the
6 deposition. Mr. Arnebeck, I would have thought,
7 would have pursued the issue of threats, and
8 would have concluded that issue all at one time.
9 Now, if he didn't do that --

10 **MR. ARNEBECK:** I did, Your Honor.

11 **THE COURT:** So whatever number
12 of pages those are, they should be redacted.

13 **MR. ERVIN:** Would the parties
14 have the ability, with the court's
15 recommendation, to have the deposition
16 transcribed and then confer as to what should be
17 redacted, and if there is a problem, contact the
18 court?

19 **THE COURT:** You certainly can
20 call me if there is an issue.

21 **MR. ERVIN:** And would the
22 court --

23 **THE COURT:** I would be happy to
24 intercede if there is a problem.

25 **MR. ERVIN:** If the court is

1 willing, we would then ask to have a copy of the
2 deposition sent to the court, have the
3 deposition transcribed and then allow the
4 counsel to go through it and try and confer on
5 what portions --

6 **THE COURT:** It is just a
7 question of time. I don't know how long the
8 deposition is. But it won't be that long. I
9 don't know what the Plaintiffs is seeking to do
10 in terms of getting the deposition printed up,
11 how long that will take, whether that will be
12 this afternoon or some other time. So I guess
13 without that information, I don't want to be in
14 a position to be the centerpiece of the process,
15 if there is an expedited process that is
16 underway.

17 **MR. ARNEBECK:** It is a somewhat
18 expedited process, Your Honor, as I understand,
19 it was four or five hours.

20 **THE COURT:** That's when you
21 intend to get it?

22 **MR. ARNEBECK:** Yes.

23 **MR. ERVIN:** Well, I think the
24 court reporter would have to weigh in on what
25 her ability is to transcribe it on an expedited

1 basis. I would not want to speak for her, Your
2 Honor.

3 (Thereupon, a discussion was held off
4 the record.)

5 **MR. ARNEBECK:** Your Honor, we were
6 poised to do it on an extraordinarily expedited
7 basis. But it is probably going to be available
8 tomorrow at some time, as the last hearing was,
9 and we are at about the same length, so I expect
10 we will have it tomorrow.

11 **THE COURT:** But I don't know
12 what use you intend to make of it. I really
13 don't want to get directly involved in anybody's
14 strategy as to what use they may or may not make
15 of it. All I am trying to do is make sure that
16 I don't get in the way, that somehow I don't
17 become the point of delay, because I don't know
18 why there would be a big reason for me to be
19 involved, although I am willing to, if there is
20 a real issue. I mean, you could clearly agree
21 on the questions related to the threat. They
22 seem discreet enough.

23 **MR. ARNEBECK:** Your Honor, I will
24 professionally represent that we certainly are
25 able to comply strictly and completely with the

1 court's order with respect to the threat.

2 And there has been no other -- there
3 has been no discussion of trade secrets in my
4 view, even in the broadest understanding of what
5 is a trade secret. I do have some familiarity
6 with that area of the law. So I don't think we
7 really have an issue here.

8 **MR. ERVIN:** Your Honor, this is
9 James Ervin. I would indicate to the court, at
10 various times through the deposition, I asked
11 the court reporter to identify that a question
12 or a line of questioning and answers would be
13 sealed, and then when we got to a point that I
14 thought should be unsealed, I indicated that to
15 her. And Mr. Arnebeck did not object.

16 So I would think when this deposition
17 is transcribed, there are going to be sections
18 that have been indicated as sealed that
19 Mr. Arnebeck may want to address or may not
20 address. So I believe there are portions of the
21 deposition that have been sealed that do fall
22 within the court's order that have not been
23 addressed thus far, that Mr. Arnebeck may want
24 to address. If we can't come to a meeting of
25 the minds --

1 **THE COURT:** Let me just give
2 you some guidance. And then, like I said
3 before, I just don't want to be in the place
4 where things are stopped unnecessarily in terms
5 of the process going forward. I really don't.

6 Now, you can agree on things that go
7 beyond my order, if you want to, in terms of
8 sealing more, although generally I would not be
9 in favor of that.

10 But what I would be concerned about
11 is that -- let me just tell you two things. One
12 is that the Secretary of State is a party to
13 this litigation. They have counsel in the
14 litigation and the case is about what happened
15 in 2004.

16 So there are not too many aspects of
17 that that could qualify as trade secret or trade
18 secret not waived. I don't see much to that
19 argument, because your client may be concerned
20 about the Secretary of State, Secretary of State
21 isn't concerned about itself.

22 **MR. ERVIN:** Well, Your Honor,
23 to respectfully interrupt, my client is
24 concerned about the release of information as to
25 how he does business with the client that may

1 give a competitive edge to other individuals,
2 and in place at the time, when there was a
3 different Secretary of State, the agreement that
4 my client had included a confidentiality clause.

5 And I am not aware if counsel for the
6 Secretary of State has waived that formally.

7 **THE COURT:** Well, when they say
8 that they have no objection, they basically are
9 taking the position, they are sitting right
10 there, that there is no Secretary of State --
11 the Secretary of State from 2004 is behind,
12 behind us. He doesn't have any standing, he is
13 not around anymore.

14 So it seems to me that the new
15 Secretary of State succeeds to whatever
16 agreements and understandings. And I am sure
17 there are many of them that they may repudiate
18 or reject or have chosen not to follow. And so
19 with that said, I mean, it would be kind of an
20 odd situation to have someone asserting their
21 concern about confidentiality and then have the
22 Secretary of State say, "We have no such
23 concern."

24 I understand that that is a good
25 place to start with, because if you have an

1 agreement with somebody, and it is going to be
2 confidential, it is legitimate that Mr. Connell
3 would say, "Well, I don't want to talk about
4 that because I am precluded." And then the
5 Secretary of State, says, "Well, we really don't
6 care."

7 You know, basically, it is like
8 attorney-client privilege which the client
9 waives, and the lawyer is still saying, "I don't
10 want to talk about it," and the client is
11 saying, "Talk about it if you want. It is
12 okay."

13 I mean, that is the way I kind of see
14 that issue.

15 **MR. ERVIN:** Thank you, Your
16 Honor.

17 **MR. ARNEBECK:** Thank you, Your
18 Honor.

19 **THE COURT:** All right. But I
20 am going to be available. So when you get the
21 transcript and you share with each other, it is
22 fine if you want to send one to me. But it is
23 less important that you send one to me, that you
24 confer once the two of you receive it and if you
25 have any issues, then you should call me right

1 away before you disseminate it.

2 **MR. ERVIN:** Yes, sir.

3 **MR. ARNEBECK:** Thank you, Your
4 Honor.

5 **THE COURT:** All right. Thank
6 you.

7 **MR. ERVIN:** Thank you.

8 **THE COURT:** Good-bye.

9 (Thereupon, the telephone conference
10 with Judge Oliver was concluded at
11 2:57 o'clock p.m.)

12 **MR. ERVIN:** All right. Why
13 don't we -- do you need a minute before we get
14 to this?

15 **MR. ARNEBECK:** Yes. Take five
16 minutes.

17 (Thereupon, a recess was taken.)

18 **BY MR. ARNEBECK:**

19 **Q.** I am going to do my best in recalling
20 exactly what the judge said.

21 Mr. Connell, are you familiar with Mr. Alan
22 Dillman?

23 **A.** Yes.

24 **Q.** And are you familiar with what role
25 Mr. Dillman played in the 2004 Presidential

1 election in Ohio?

2 **A.** Relevant to his being a vendor for the
3 election night project. I know nothing beyond
4 that.

5 **Q.** In other words, you do not know of your
6 personal knowledge whether or not he is employed
7 by Cedarville University?

8 **MR. ERVIN:** Objection; lack of
9 foundation. You may answer that question.

10 **THE WITNESS:** I think he was a
11 part-time instructor, yes.

12 **BY MR. ARNEBECK:**

13 **Q.** Do you have any knowledge of your personal
14 knowledge whether or not, through Mr. Dillman or
15 otherwise, that there was any direct connection
16 between the Secretary of State's office and
17 Cedarville University on election night?

18 **MR. EPSTEIN:** Objection.

19 **MR. ERVIN:** Is that other than
20 him knowing Dillman was a part-time professor at
21 a university?

22 **MR. FITRAKIS:** Yes, I think just
23 was there a direct connection? You know, we
24 have reason to believe that there was a direct
25 connection between the Secretary of State's

1 office and Cedarville University for data and/or
2 imaging transmission.

3 **MR. ARNEBECK:** All my question is,
4 he said that all he knows besides the fact that
5 Dillman had the contract, had a role in the
6 Secretary of State's office, he knows he had a
7 part-time position with Cedarville University,
8 and I am just asking, and perhaps by implication
9 he said he wouldn't know this, but I am asking
10 specifically does he have any knowledge of his
11 personal knowledge of any role, or any
12 connection between the Secretary of State's site
13 and Cedarville University on election night.

14 **MR. EPSTEIN:** Object to the form.

15 **MR. ERVIN:** I object to the
16 form. Answer the question.

17 **THE WITNESS:** I am not aware of
18 any connection between Cedarville University and
19 the Ohio Secretary of State on election night.

20 **BY MR. ARNEBECK:**

21 **Q.** Okay. One last question. Are you aware of
22 any connections between SmarTech and Cedarville
23 University on the election night 2004?

24 **A.** No.

25 **MR. EPSTEIN:** Object to form and

1 foundation.

2 **MR. ARNEBECK:** I think that
3 concludes our deposition. If you have nothing?

4 **MR. EPSTEIN:** I have no
5 questions.

6 **MR. ERVIN:** I have no Redirect.
7 You have the right to read the transcript, to
8 make any corrections that you see fit. You
9 can't change the substance, but you can change
10 spelling. You have the right to waive that. If
11 you want to instruct the court reporter that you
12 want to read, just tell her you want to read.

13 **THE WITNESS:** I would like to
14 read.

15 (Thereupon, the M.L. Connell
16 deposition was concluded at 3:07
17 o'clock p.m.)

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STATE OF OHIO,)

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) SS:

SUMMIT COUNTY,)

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5 I, Binnie Purser Martino, a Registered
 6 Diplomat Reporter, Certified Realtime Reporter
 7 and Notary Public within and for the State of
 8 Ohio, duly commissioned and qualified, do hereby
 9 certify that the within named witness, MICHAEL
 10 L. CONNELL, was by me first duly sworn to
 11 testify the truth, the whole truth and nothing
 12 but the truth in the cause aforesaid; that the
 13 testimony then given by him was by me reduced to
 14 Stenotype in the presence of said witness,
 15 afterwards prepared and produced by means of
 16 Computer-Aided Transcription and that the
 17 foregoing is a true and correct transcript of
 18 the testimony so given by him as aforesaid.

19 I do further certify that this deposition
 20 was taken at the time and place in the
 21 foregoing caption specified, and was completed
 22 without adjournment.

23 I do further certify that I am not a
 24 relative, employee of or attorney for any party
 25 or counsel, or otherwise financially interested
 in this action.

I do further certify that I am not, nor is
 the court reporting firm with which I am
 affiliated, under a contract as defined in Civil
 Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed my seal of office at Akron,
 Ohio on this 10th day of November, 2008.

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Binnie Purser Martino, RDR, CRR

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My commission expires June 26, 2009.

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